Supreme Court, U.S.
FILED

No. 961926 APR 14 1997

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

GERALDINE WILLIAMS
AND
WOODROW WILLIAMS, JR.

Petitioners,

- v -

FRANKLIN FIRST FEDERAL SAVINGS BANK AND
SHERIFF OF LUZERNE COUNTY,
SHERIFF'S DEPARTMENT OF LUZERNE COUNTY

Respondents.

On Petition For Writ of Certiorari
To The Supreme Court of Pennsylvania
Middle District

PETITION FOR WRIT OF CERTIORARI

Woodrow Williams, Jr.
Geraldine Williams
pro se
110 Water Street
Gaithersburg, MD 20877
(301)258-9592

QUESTIONS PRESENTED FOR REVIEW

1. Is Franklin responsible under the law for extensive damage that had occurred to the property while Franklin was in possession of the property in question by virtue of a Deed of Trust issued by the Sheriff to Franklin.

2. Is Franklin responsible for real estate taxes due and payable while Franklin had the property in their possession for three years by virtue of a Deed of Trust issued by the Sheriff's Department to Franklin.

3. Is The Sheriff's Department responsible for allowing a wrongful foreclosure after the Sheriff's Department received Notice of Bankruptcy.

4. Whether the lower courts improperly applied the Standards of Law regarding the automatic stay under the applicable Bankruptcy Code, 11 U.S.C.A. 362 afforded to the petitioner in a bankruptcy proceeding. The lower court completely ignored the issues of Franklin and the Sheriffs' Department having been served notice of a bankruptcy proceeding and **after notice of bankruptcy** having gone forward with a foreclosure **without** a Lift Stay Hearing. **A Federal Judge by Order of the Court, Ordered real property returned to the Petitioners declaring that the foreclosure sale of said property by Franklin and the Sheriff's Department was invalid and shall be set aside with all expenses to be born by Franklin.**

11 U.S.C. 362 states that an individual injured by a violation of the automatic stay shall recover actual damages, including costs and in appropriate circumstances, may recover punitive damages.

QUESTIONS PRESENTED FOR REVIEW - CON'T

5. Whether the Lower Court misinterpreted Pennsylvania Rules 3135, 3136 and 3133, which states that by accepting a valid Sheriff's Deed, Franklin had the sole responsibility of paying the taxes, maintaining the property and clearing all liens of record against said property. Franklin had the property in their possession for three years before Judge Gibbons, in Federal Bankruptcy Court, returned the property to the Petitioners. For this period of three years, real estate taxes fell into arrears and the property was permitted to suffer waste and deterioration.

6. Whether the Lower Court misinterpreted and skated the issues that there never was a trial afforded the Petitioners, that the Petitioners were denied a hearing in open court in the Court of Common Pleas of Pennsylvania, Luzerne County, and that the Respondents misrepresented to the Panel of the Superior Court in Philadelphia the value of the property.

7. Whether the Lower Court improperly applied the Standards articulated in Federoff v. Harrison Construction Co., 163 Pa. Super. 53, 60 A.2d 334 (1948), where it was held that negligence can be justifiably inferred and warranted where proof of an intentional act is insufficient and the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional; and in Beardell v. Western Wayne School District, 91 Pa. Cmwlth. 348, 496 A.2d 1373 (1985), where it was held that the trial court abused its discretion in not allowing the pleadings to be amended to allow full development of a party's theories and averments.

8. The denial of Appeal by The Supreme Court of Pennsylvania, Middle District, is contradictory to Amendment XIV of the United States Constitution, which provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside or their property is located. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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B.....Petition to Set Aside Sale
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D.....Sheriff's Deed to Franklin
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JURISDICTION

This is a Petition for Writ of Certiorari, this date, April 14, 1997, from a Per Curiam Order and Denial of an Appeal by The Supreme Court of Pennsylvania, dated January 21, 1997. Copy of Order Attached (Exhibit A).

STATEMENT OF THE CASE

The Petitioners, Geraldine Williams, native of Pennsylvania, and Woodrow Williams, Jr., hereinafter referred to as Petitioners, had a mortgage dated August 19, 1977, with Franklin First Federal Savings and Loan Association of Wilkes-Barre n/k/a Franklin First Federal Savings Bank, 44 West Market Street, City of Wilkes-Barre, County of Luzerne, Commonwealth of Pennsylvania, hereinafter referred to as Franklin.

The property is known as R.D. 1, Box 17B, 1007 Meadow Run Road, Oak Hill Park, Bear Creek Township, Luzerne County, Pennsylvania. Sometime in the latter part of 1985, there was a banking merger and it was during this time that Franklin lost two payments that the appellants had made. The appellants made several trips to Franklin to try and resolve this matter and brought to Franklin copies of canceled checks for these two payments. However, Franklin's mortgage department refused to acknowledge these payments or credit the mortgage properly. Phone calls were placed to the President of Franklin to further resolve this situation when Franklin's mortgage department proceeded with foreclosure proceedings against the appellants in 1986.

Due to unfortunate circumstances, the appellants then found it necessary to file for bankruptcy in 1986 in Maryland, the state where the appellants have been residing. Franklin was

listed as a debt on the bankruptcy filing and Franklin and Franklin's attorney was sent notice of the initial bankruptcy filing and Franklin and their attorney received Notice of Suggestion of Bankruptcy on February 3, 1987 and said notice was stamped by the Prothonatary's office on February 3, 1987 at 12:36 p.m., (exhibit A). In a long distance telephone conversation with the Sheriff's Department on February 3, 1987, **before the foreclosure sale**, the Sheriff's Department acknowledged the fact that they knew about the bankruptcy filing and assured the petitioners that the foreclosure would not go forward. **The attorney for Franklin and Franklin never filed for lifting of the automatic stay imposed by U.S.C. 362 of the Federal Bankruptcy Code.**

Instead, Franklin and the Sheriff's Department proceeded with the foreclosure on February 6, 1987, **unknown to the petitioners**. In March when the petitioners traveled to

Pennsylvania, the petitioners found the locks on the house changed and the petitioners were unable to enter the house. On May 11, 1987, Attorney Stephen Fendler, filed a Petition to Set Aside Sale and on May 13, 1987, Judge Patrick O'Toole, Jr., issued an Order for a Rule to be issued upon Franklin to show cause why the Sheriff's Sale of the premises known as R.D. 1, Box 17B, 1007 Meadow Run Road, Oak Hill Park, Bear Creek Township, Luzerne County, Pennsylvania, should not be set aside and why the Sheriff's Deed to Franklin should not be stricken and declared void and why the petitioners should not be awarded attorneys fees, costs, and punitive damages, (Exhibit B). Franklin nor the Sheriff's Department responded to this Order.

Approximately April of 1989, petitioners appeared in Court before Federal Judge Thomas C. Gibbons, for the purpose of determining the validity of the foreclosure by Franklin and the Sheriff's

Department. **On June 13, 1989, Judge Gibbons Ordered the foreclosure invalid and set aside and further Ordered that with this conveyance back to the petitioners, all costs be borne by Franklin, (Exhibit C).**

On October 10, 1989, the petitioners sent a letter to Judge Gibbons, stating that Franklin and its attorney, Robert Spielman, did not comply with Judge Gibbon's Order and the petitioners had not received a Deed and the keys to the property. Shortly, thereafter, the petitioners received the keys and the reconveyance to the property. **Upon inspection of the property in October, 1989, petitioners found considerable damage to the basement structure of the home which is crumbling and one wall is caving in excessively and needs to be reconstructed in addition to other damages inside and outside of the home. This damage resulted from the negligence by Franklin over the years since the foreclosure and**

continuing to the present with the loss of use of the home due to the uninhabitable condition still prevailing, and the petitioners have continued to be denied the use of the property by Franklin and the Sheriff's Department. Franklin never paid any taxes owed from the time of the foreclosure, February 6, 1987 to the reconveyance in October 1989, almost three (3) years with the taxes doubling every year. Franklin did not release the liens of record when Franklin accepted the valid Sheriff's Deed, (Exhibit D). The basis of the Respondents' denial of responsibility is that these claims have been litigated before. The Petitioners deny this claim which is supported by documented evidence showing **no litigation having taken place before,** non-payment of taxes by Franklin for three years and the refusal of Franklin to pay for damages to the house while in Franklin's possession. During the entire time from February 3, 1987 to the

present, Petitioners have been denied the use of this property.

Petitioners engaged Attorneys, Krawitz and Krawitz of Pennsylvania to represent their interests. Thereafter, and in further response to the motion for summary judgment the Petitioners' attorney, Steven Krawitz, filed a response and a brief with the Court of Common Pleas of Luzerne County, Wilkes-Barre, PA. On the 10th of May, 1995, Judge Mundy of the Court of Common Pleas of Luzerne County entered an Order in favor of the Respondents and granted Summary Judgment. On May 30, 1995, a Notice of Appeal from said Summary Judgment was filed. Pursuant to Pennsylvania Rules of Procedure, Pa. R.A.P. 3517, the Petitioners filed a docketing statement on June 23, 1995.

ARGUMENT

The Petitioners' argument is based upon the trial court's failure to allow a trial by jury which is

mandated by law when there is genuine issues as to any material fact to be resolved.

The Petitioners' argument revolves around an improper foreclosure sale conducted by the Sheriff and prompted by Franklin, **which said sale took place after the filing of the notice of bankruptcy in Luzerne County**. Federal Judge Gibbons later determined in his Opinion and Order dated June 13, 1989, that,

> "Judgment shall be entered in favor of the debtors against the movant, Franklin First Federal Savings and Loan Association of Wilkes-Barre, declaring that the foreclosure sale of debtors' real property located at R.D. #1, Box 17B, Meadow Run Road, Oakhill Park, Bear Creek, Luzerne County, Pennsylvania, is invalid and shall be set aside; and further
>
> ORDERED that Franklin First Federal Savings and Loan Association of Wilkes-Barre shall reconvey the above-stated real property to debtors....without cost to the debtors".

Judge Gibbons also opined in the aforesaid opinion and order that, "there is a presumption and, indeed, a likelihood that Franklin was notified of the Bankruptcy prior to the Sheriff's Sale".

In short, Petitioners lost their property by reason of a foreclosure sale that should not have happened. Appellants did not recover the property until approximately three years later. During that time the property experienced severe waste and structural damage. At the time of said foreclosure sale, there were no real estate taxes due and owing to the municipality. Upon return of the property to the petitioners, real estate taxes were in arrears for three years. Petitioners are also entitled to damages for loss of use and waste to the property as a result of the wrongful sale/purchase and ownership of Franklin and the subsequent neglect of the property.

The U.S. Bankruptcy Court's determination that violation of the automatic stay by Respondents was not intentional or "willful" certainly does not collaterally estop Petitioners from asserting claims for damages as a result of the wrongful, improper, unintentional and negligent violation of the automatic stay ***qua*** foreclosure sale and damages

reasonably flowing therefrom, precipitated thereby, and as a natural consequence thereof. Indeed, just as in ***Federoff, supra,*** the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional. The Bankruptcy Court had no jurisdiction, to award damages to Petitioners as debtors for the violation of the automatic stay committed unintentionally or without willfulness. To now say that Petitioners cannot seek redress for their financial harm here would be to virtually annihilate half of the well and long established law of torts.

Petitioners, Woodrow Williams and Geraldine Williams, filed an Appeal with the Pennsylvania Superior Court seeking to overturn the lower courts decision. On April 1, 1996, the Superior Court affirmed the judgment of the Court of Common Pleas of Luzerne County. The Petitioners then filed Application with the Pennsylvania Superior Court on April 10, 1996,

requesting Reargument/Reconsideration of the Decision. The Petitioners' Application was denied per curiam on June 4, 1996.

STATEMENT OF REASONS FOR THE ALLOWANCE OF A PETITION FOR WRIT OF CERTIORARI

1. Whether a Panel of the Supreme Court of PA improperly applied the Standards of law regarding the automatic stay under the applicable Bankruptcy Code, 11 U.S.C.A. 362 afforded to the petitioners in a bankruptcy proceeding.

The Panel completely ignored the issues of Franklin and the Sheriffs' Department having been served notice of a bankruptcy proceeding and after notice having gone forward with a foreclosure and without a Lift Stay Hearing. Summary judgment was not properly granted in a case where a Federal Judge by Order of the Court, Ordered real property returned to the Petitioners declaring that the foreclosure sale of said property by Franklin and the Sheriff's Department was invalid and shall be set aside with all expenses to be born by Franklin. Summary Judgment should only be granted if all

pleadings, depositions and answers to interrogatories together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party would be entitled to judgment as a matter of law. Entry of summary judgment may only be granted in cases where the right is clear and free from doubt. When considering the motion for summary judgment, the Court is to examine the record in the light most favorable to the nonmoving party and giving the nonmoving party the benefit of all reasonable inferences which may be drawn therefrom, ***Hower vs. Whitmak Assoc., supra***. A motion for summary judgment is designed to provide a speedy method for determining whether or not there is a question of fact, and, if no such question is present, to provide for a prompt determination of questions of law. Pa.R.C.P. 1035, ***Vend-a-matic, Inc. v. Frankford Trust Company***, 296 Pa. Super. 492, 442 A.2d 1158 (1982). A motion for summary judgment is

only appropriate when there is no genuine issue of fact in dispute. Pa.R.C.P. 1035(b); ***Barber v. Harleysville Mutual Insurance Company***, 304 Pa. Super. 355, 450 A.2d 718 (1982).

The genuine issues of material fact which must be presented to the Court and why summary judgment should not be issued revolves around the indisputable facts that; (a) Franklin and the Sheriff's Department knew about the bankruptcy filing, but, nevertheless, proceeded with the foreclosure sale without obtaining a lift stay; (b) Franklin accepted a Sheriff's Deed to the property and while this property was in the possession of Franklin, taxes were not paid for 3 years; (c) when Franklin accepted the Sheriff's Deed, Franklin was required to clear the record of all liens against the property which Franklin did not do; (d) while in Franklin's possession, the property was allowed to deteriorate making it uninhabitable and dangerous; and (e) Franklin's actions and the actions by the Sheriff's

Department have not only deprived the appellants of the use of this property for years but have created undue hardships.

In the reported decision of Judge Gibbons regarding the post-petition Sheriff Sale of the subject real estate in the bankruptcy, ***In re Williams,*** 100 B.R. 726, 729 (Bkrtcy. M.D.Pa., 1989), it was held and affirmed that any creditor listed as such in the bankruptcy petition is presumed to have received notice from the bankruptcy clerk of the filing of the bankruptcy. Notice was mailed and stamped by the prothonatary as received, (attached as Exhibit A). Said filing occurred in this case on January 12, 1987, a month before the foreclosure sale occurred. Judge Gibbons recited the fact that Franklin was properly listed as a creditor in the initial bankruptcy petition and schedule. Thus, Franklin knew of the bankruptcy filing, but, nevertheless, proceeded with the foreclosure sale.

Collateral estoppel has been raised by the Respondents and the motion for summary judgment based on collateral estoppel and res judicata has as its basis that Judge Gibbons found that Franklin's violation of the automatic stay was not "willful" under the applicable Bankruptcy Code provision 362(h), which states: "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

Petitioners contend that the Recorder of Deeds Office of Luzerne County and the Sheriff's Office did receive timely notice of the bankruptcy filing despite Judge Gibbon's finding to the contrary, (See Exhibit A). The issue of a negligent or unintentionally tortious violation of the automatic stay provisions which caused the damages claimed by the Appellants remains.

2. Whether a Panel of the Supreme Court

of PA misinterpreted Pennsylvania Rules 3135, 3136 and 3133, which states that by accepting a valid Sheriff's Deed, Franklin had the sole responsibility of paying the taxes, maintaining the property and clearing all liens of record against said property.

Franklin had the property in their possession for three years before Judge Gibbons returned the property to the Petitioners. For this period of three years, real estate taxes fell into arrears and the property was permitted to suffer waste and deterioration. Federal law established and imposed a duty on Franklin and the Sheriff not to proceed with the Sheriff Sale once the bankruptcy was filed. Respondents knew of the filing of the bankruptcy. Respondents breached the duty by proceeding with the sale. As a result, Franklin received a property at sale which had not real estate taxes due and owing, and was in good and habitable condition. Legal title was taken and recorded. Approximately three years later, Judge Gibbons directed Franklin to reconvey the property to the Appellants. At the

time of reconveyance, taxes for the period of time that Franklin held title were due and owing, and the property had been permitted to waste and deteriorate due to Franklin's neglect, which, as owner and unwitting bailee, it had a duty to prevent.

Therefore, it is submitted that unintentional tortious conduct and harm has been sufficiently alleged. Respondents' have had ample notice of such claims.

3. Whether a Panel of the Superior Court misinterpreted and skated the issues that there never was a trial afforded the Appellants, that the Appellants were denied a hearing in open court in the Court of Common Pleas of Pennsylvania, Luzerne County, and that the Appellees misrepresented to the Panel of the Superior Court the Value of the property.

The Panel of the Superior court of Philadelphia ignored the deliberate false statement made by the Respondents in open court to the Panel regarding misrepresentation of the value of the property which Respondents said was $30,000 or less. The Respondents filed a Realty Transfer Tax

Statement of Value (Exhibit F) with the Recorder of Deeds of Luzerne County which states that the value of the property in 1990 is $82,049.50.

4. Whether a Panel of the Superior Court improperly applied the Standards articulated in Federoff v. Harrison Construction Co., 163 Pa. Super. 53, 60 A.2d 334 (1948), where it was held that negligence can be justifiably inferred and warranted where proof of an intentional act is insufficient and the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional; and in Beardell v. Western Wayne School District, 91 Pa. Comwlth. 348, 496 A.2d 1373 (1985), where it was held that the trial court abused its discretion in not allowing the pleadings to be amended to allow full development of a party's theories and averments.

Thus it is submitted that allegations and pleadings of an intentional or willful act reasonably infer such tortious conduct may have occurred unintentionally or negligently. To the extent necessary, Appellants should be permitted to amend their pleadings to include the allegations of negligence or unintentional tortious violation of the provisions of the automatic stay if the Court should find that the same are not reasonably inferred from

the pleadings in their present form. ***See Beardell v. Western Wayne School District,*** 91 Pa. Cmwlth. 348, 496 A.2d 1373 (1985), where it was held that the trial court abused its discretion in not allowing the pleadings to be amended to allow full development of a party's theories and averments. The Court held that amendment to the pleadings should be liberally granted. ***See also, Daley v. John Wanamaker,*** 317 Pa. Super. 348, 464 A.2d 355 (1983).

If the Petitioners' amendment adds to or amplifies the original complaint or if the original complaint states a cause of action showing Petitioners have a legal right to recover what is claimed in the subsequent amended pleading, it is held that a new cause of action is said not to exist. ***Wilson v. Howard Johnson Restaurant,*** 421 Pa. 455, 460, 219 A.2d 676 (1966). Moreover, it has been held that negligence can be justifiably inferred and warranted where proof of an intentional act is

insufficient. ***Federoff v. Harrison Construction Co.***, 163 Pa. Super. 53, 60 A.2d 334 (1948).

Franklin reconveyed the property in July of 1989 under judicial compulsion, and returned access to the property several months thereafter to Petitioners. For the period of approximately three years, real estate taxes fell into arrears and the property was permitted to suffer waste and deterioration. During this period, Petitioners had no legal right to attempt to prevent such waste and deterioration, and it would certainly be ridiculous to suggest that the Petitioners should pay taxes, insurance or any mortgage encumbrances on a property to which they no longer had title. Such harm is clear and a direct result of the tortious conduct of the Respondents, whether it is intentional or unintentional.

The U.S. Bankruptcy Court's determination that violation of the automatic stay by the Respondents was not intentional or "willful"

certainly does not collaterally estop the Petitioners from asserting claims for damages as a result of the wrongful, improper, unintentional and negligent violation of the automatic stay and the subsequent foreclosure sale and damages reasonably flowing therefrom, precipitated thereby, and as a natural consequence thereof, qua. As in ***Federoff, supra,*** the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional. The Bankruptcy Court had no jurisdiction to award damages to Petitioners as debtors for the violation of the automatic stay committed unintentionally or without willfulness. To now say that Petitioners cannot seek redress for their financial harm here would be to virtually annihilate half of the well and long established law of torts.

Permitting the Petitioners to proceed on a theory of unintentional, as distinguished from willful, conduct presents no surprise or prejudice as

to the Petitioners, as allegations of willfulness and intentional conduct subsume, and give sufficient notice of a claim for, unintentional, careless and negligent conduct by the Respondents. The Complaint can reasonably be construed to allege unintentional or negligent conduct on the part of the Respondents, even without amendment.

5. The Panel ignored Amendment XIV of the United States Constitution, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws; and the Panel ignored 11 U.S.C. 362 of the Bankruptcy Code which states that an individual injured by a violation of the automatic stay shall recover actual damages, including costs and in appropriate circumstances, may recover punitive damages.

The Federal Bankruptcy law in no way confiscates the Petitioners/Debtors state court remedies for financial harm caused as a result of cognizable tortious conduct. Those remedies continue to be available to the Petitioners/Debtors even during the pendency of a bankruptcy and

afterwards. Petitioners should be permitted to pursue compensation for harm as the clear, direct and natural result of a Sheriff Sale that should never have taken place.

Certain facts are undisputed: The Sheriff Sale occurred three (3) days after the institution of the automatic stay provisions under Federal Bankruptcy Law. By definition, a violation of that automatic stay occurred by virtue of the conducting of the Sheriff Sale. At the time Franklin took possession and ownership of the property following the Sheriff Sale it had actual or constructive knowledge of the automatic stay as did Luzerne County; real estate taxes were up to date and the premises were habitable and in good repair. At the time of the reconveyance of legal title and restoration of access to the property to the Petitioners following Judge Gibbons' order, the contrary was true. Nothing in the Bankruptcy Code or Judge Gibbons' decision, precludes or forecloses

any other civil remedy on an unintentional tort or negligence standard.

The Appellants should receive compensation adequate to return the subject premises to its pre-Sheriff Sale condition as well as compensation for almost three years of municipal tax arrearage and loss of use while appellants were out of ownership and possession plus the continuing loss of use by reason of the dilapidated condition resulting from the neglect of the Appellees.

ASSESSMENT OF DAMAGES

1. TAXES (approximately) $ 38,000

2. DAMAGE TO PROPERTY (approximately) 35,000

3. Loss of use of the property based on a possible $500 per month rental fee - 1987 to 1997 (131 months) 65,500

4. Loss of use and enjoyment of the property for 11 years due to the invalid and improper foreclosure as determined by Order of a Federal 275,000

Bankruptcy Judge @ $25,000 per year

6. FRANKLIN TO SATISFY MORTGAGE

Approximately $30,000 with no actual money paid by bank since Franklin, long ago, realized an advantage by writing off this loan.

Franklin has continued to harass Petitioners by continuing to send statements of monies due and interest charged. Excerpts from a transcript in bankruptcy court shows that Mr. Johnson, Vice President, testified under oath that Franklin <u>does not</u> hold any note due on this property signed by the Petitioners, (Exhibit E), and therefore, the original mortgage must be satisfied of record. Also excerpted, is testimony in Bankruptcy Court by Mr. Johnson as to the fact that Mr. Johnson was in the President's office when the Petitioners placed a long distance call to the President to try and resolve the matters long <u>before</u> foreclosure.

An assessment of attorney's fees are not

included in the above and must be made part of any settlement.

The Sheriff and his Department has a civic and legal duty to society to make certain foreclosures do not occur erroneously or improperly. An assessment of damages must also be made against the Sheriff's Department.

The appellants believe that a fair settlement would be $1,000,000 (one million dollars) to be divided equally between Franklin and the Sheriff's Department or any division between Franklin and the Sheriff's Department that the Court deems appropriate.

CONCLUSION

Based upon the analysis set forth above along with the foregoing reasons and the Authorities set forth hereinbefore, the decision of The Supreme Court of Pennsylvania to deny the Allowance of an Appeal by the Petitioners and to further deny their citizen's right to due process and judicial review

and a trial by jury is in direct conflict with this Court's earlier holdings.

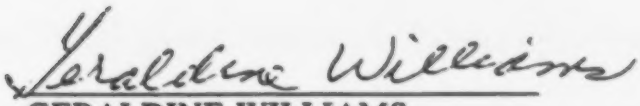
Congress designed an integrated, balanced statutory scheme to enable debtors in financial distress to reorganize. This scheme requires time and constructive negotiation among all parties in interest. The Bankruptcy Code should balance the rights and remedies of all parties in order to effect Congress' design.

The Petitioners, therefore, prays that this Court reverse the holding of the court below and remand for proceedings consistent with such reversal.

The interests at stake in this case are comparable to others in which this Court has not hesitated to review decisions from the Courts of Appeals. Accordingly, the petition should be granted.

RESPECTFULLY SUBMITTED,

WOODROW WILLIAMS, JR.



GERALDINE WILLIAMS
pro se
110 Water Street
Gaithersburg, Maryland 20877
301-258-9592

DATED: April 14, 1997

EXHIBIT A

IN THE SUPERIOR COURT OF PENNSYLVANIA

GERALDINE WILLIAMS AND
WOODROW WILLIAMS, JR.,

Appellants

v. No. 1955 Philadelphia 1995

FRANKLIN FIRST FEDERAL SAVINGS
BANK AND SHERIFF OF LUZERNE
COUNTY

Appeal from the Order Entered May 5, 1995,
in the Court of Common Pleas of Luzerne County,
Civil Division, No. 3342-C of 1990

BEFORE: HUDOCK, FORD ELLIOTT,
AND CERCONE, JJ.

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of LUZERNE County be, and the same is hereby AFFIRMED. JURISDICTION RELINQUISHED.

BY THE COURT:
/S/ PROTHONOTARY

Dated: April 1, 1996

IN THE COURT OF COMMON PLEAS
FOR LUZERNE COUNTY

FIRST FED'L SAVING LOAN ASSOCIATION
OF WILKES-BARRE N/K/A
Franklin First Fed'l Saving Loan
Association of Wilkes-Barre NC 3807-C of 1986

Plaintiff

vs.

Woodrow W. Williams, Jr.
Geraldine J. Williams

Defendants

SUGGESTION OF BANKRUPTCY

MADAME CLERK:

Please note that the defendant Woodrow Williams has filed a single chapter 13 Bankruptcy Petition, Case No. 874-0043 on January 12, 1987, in the U.S. Bankruptcy Court for the District of Maryland (Rockville). A copy of the petition is attached hereto as exhibit A.

Note that title 11 U.S.C. 362 automatically stays further civil proceedings after the original petition has been filed.

Please make an entry noting the same and file this suggestion.

Woodrow W. Williams
12517 South Stable House Ct.
Potomac, Maryland 20854

CERTIFICATE OF SERVICES

I HEREBY CERTIFY that on this 2nd day of February 1987 a copy of the aforegoing Suggestion of Bankruptcy was mailed by first class mail, postage prepaid, to Robert Danberg, 15 South Franklin Street, Wilkes-Barre Pa 18711, and Thomas Lackey, Bankruptcy Trustee, 3231 Superior Lane, Ste K-21, Bowie, MD 20715.

/S/_____

Joseph S. Friedman, Esq.
1025 Vermont Ave., Ste 1200
N.W. Washington, D.C. 20011
202-737-2220

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GERALDINE WILLIAMS AND WOODROW WILLIAMS

Petitioners

416 M.D.A

Dkt. 1996
Petition for Allowance of Appeal from Order of the Superior Court

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK AND SHERIFF OF LUZERNE COUNTY

Respondents

ORDER

PER CURIAM

AND NOW, this 17th day of January, 1997, the Petition for Permission to Respond to Opposition is denied. The Petition for Allowance of Appeal is denied.

True and Correct Copy
Attest: Jan 21, 1997

/S/_____
Joan L. Stehulak, Esquire
Deputy Prothonotary

EXHIBIT B

IN THE SUPREME COURT OF COMMON PLEAS
OF LUZERNE COUNTY

FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION oF WILKES BARRE,
ACTION LAW n/k/a FRANKLIN FIRST
FEDERAL SAVINGS AND LOAN
ASSOCIATION or WILKES-BARRE,

Civil
Law
NO.
3807-C
1986

Plaintiff

v.

WOODROW W. WILLIAMS, JR. *and*
GERALDINE J. WILLIAMS,

Defendants

PETITION TO SET ASIDE SALE

Petitioners, Woodrow W. Williams, Jr. and Geraldine J. Williams, his wife, by and through their counsel, WINKLER, DANOFF AND LUBIN, Stephen J. Fendler, Esq. representing, represent the following:

1. That Petitioners are adult individuals currently residing at 12517 South Stable House Court, Potomac, Maryland.

2. That Respondent, First Federal Savings and Loan Association of Wilkes-Barre n/k/a Franklin First Federal Savings and Loan Association of Wilkes-narre, is a banking institution authorized to conduct business in Luzerne County, Pennsylvania, with a registered office situate at 44 West Market Street, Wilkes-Sarre, Luzerne County, Pennsylvania.

3. That petitioners were the owners of a certain premises improved with a single family dwelling more commonly known as R.o. 1, Box 173, Meadow Run Road, Oak Hill Park, Bear Creek Luzerne County, Pehnsylvania.

4. That on or before January 2, 1987, the aforesaid premises were to~be exposed to Sherift's Sale by the Respondent, First Federal Savings and Loan Association of Wilkes-narre n/k/a Franklin First Federal Savings and Loan Associatton of WilkesBarre, captioned to the above

term and number.

5. That prior to January 2, 1987, at the request of the Petitioners, the aforesaid sale was postponed by the Sheriff of Luzerne County due to the impending filing of a Petition in Bankruptcy by the Petitioner, Woodrow W. Williams, Jr.

6. That on January 12, 1987, Petitioner, Woodrow W. Williams, Jr., filed a chapter 13 Bankruptcy Petition in the united States Bankruptcy Court for the District of Maryland (Rockville) taptioned to Case No. 874-0093.

7. That the aforesaid Bankruptcy Petition specifically encompassed the subject premises commonly known as u.n. 1, Box 175, Meadow Run Road, Oak Hill Park, Bear Creek, Luzerne County Pennsylvania and listed as a debtor the Respondent herein, FirsFederal Savings and Loan Association of Wilkes-Barre n/k/a Franklin First Federal Savings and Loan Association

of Wilkes-Barre.

6. That on February 3, 1967, a. suggestion of Bankruptcy and accompanying copy of the Bankruptcy petition was filed by the petitioners with the prothonotary of Luzerne County captioned to the above term and number.. A true and correct copy of said suggestion of Bankruptcy and Bankruptcy petition are attached hereto, incorporated herein, and marked as Exhibit A.

9. That on or before February 6, 1967, the petitioners notified the Office of the Sheriff of Luzerne county that the petition in Bankruptcy had been filed and that the sale of the aforesaid premiSes should be again postponed.

10. That *on* February 6, 1997, the sheriff of Luzerne county at the behest of the Respondent, First Federal Sayings and Loan Association of wilkes-Barre n/k/a Franklin First Federal Savings and Loan Association

of wilkes-Barre, exposed the aforesaid premises to Sheriff's sale.

11. That the Respondent, First Federal savings and Loan Association of Wilkes-Barre n/k/a Franklin First Federal Savings and Loan Association of wilkes-Barre, was the successful bidder at the aforesaid sheriff's sale.

12. That the sale of the aforesaid premises was clearly unlawful and improper by virtue of the petitioner, woodrow W. Williams, Jr., having filed a petition in Bankruptcy and, Specifically by virtue of the automatic stay provision set forth in the Bankruptcy Code at Title 11 U.S.C. section 362.

13. As a result of the Respondent's willful vioLation of the automatic stay provision contained in the Bar.kruptcy Code, Petitioners are entitled to recover their actual damages, including all cQsts, attorneys fees, and punitive damages.

WHEREFORE, petitioners pray that this Honorable Court issue a Rule upon the Respondents to show cause why the sheriff's Sale of the premises known as u.n. 1, Dcx 178, Meadow Run Road, Oak Hill park, Bear Creek, Luzerne County, Pennsylvania, should n6t be set aside and why the Sheriff's deed to Franklin First Federal savings and Loan Association of wilkes-Barre should not be stricken and declired void and, also, why the Petitioners should not be awarded attorneys fees, costs and punitive amages.

Respectfully submitted,

Winkler, Danoff and Lubin

BY: /s/ Stephen Fendler, Esq.
Attorneys for Petitioners
304 Wilkes-Barre Center
39 Public Square
Wilkes-Barre, PA 18711

VERIFICATION

We, Woodrow W. Williams, Jr. and Geraldine J. Williams, do hereby verify that we are the Petitioners herein, that we have read the foregoing PETITION TO SET ASIDE SALE and that the facts contained therein are true and correct to the best of our knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S., Section 4904 with respect to unsworn statements to authorities.

_____
Woodrow W. Williams, Jr.

_____
Geraldine J. Williams

DATED: May 11, 1987

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:

Woodrow Williams, Jr. and Geraldine Williams — Bankruptcy No. 5-87-0126 (Misc.)

Debtors

ORDER

AND NOW, at Wilkes-Barre, this 13th day of June, 1989, it is hereby

ORDERED that judgment shall be entered in favor of the Respondent/Debtors and against the Movant, Franklin First Federal Savings and Loan Association of Wilkes-Barre, declaring that the foreclosure sale of debtors' real property located at R.D. #1, Box 17B, Meadow Run Road, Oak Hill Park, Bear Creek, Luzerne County, Pennsylvania, is invalid and shall be set aside; and further

ORDERED that Franklin First Federal Savings and Loan Association of Wilkes-Barre shall reconvey the above stated real property to Respondents/Debtors and all recording

fees and other fees associated with the reconveyance together with the preparation of the Deed and other documents shall be borne by Movant, Franklin First Federal Savings and Loan Association of Wilkes-Barre; and it is further

ORDERED that the clerk of the court shall enter this document as the judgment of the court.

BY THE COURT

/S/_____
THOMAS C. GIBBONS
Bankruptcy Judge

EXHIBIT D

Know all Men by these Presents,

That I, FRANK J. JAGODINSKI ---------- *Sheriff of the County of Luzerne, in the State of Pennsylvania, for and in consideration of the sum of* TWO THOUSAND THREE HUNDRED TWENTY-FOUR AND 56/100 ---------- ($2,324.56) ---------- *dollars, to me in hand paid, do hereby grant and convey to*

FRANKLIN FIRST FEDERAL SAVINGS
AND LOAN ASSOCIATION OF WILKES-BARRE
44 WEST MARKET STREET
WILKES-BARRE, LUZERNE COUNTY,
PENNSYLVANIA

ALL the surface and right of soil only to that certain piece or parcel of land situate in the Township of Bear Creek, Luzerne County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point in the westerly side line of the 50.00 foot wide State Highway Legislative Route No. 40043, leading in a northeasterly direction to Thornhurst, and in the dividing line between lots Numbers 167 and 168 on plot of lots known as "Oak Hill Park", Section "B", hereinafter mentioned. Said beginning point being also distant about 4893.03 feet measured in a northeasterly direction along the westerly side line of said State Highway from the northerly side of the 100.00 foot wide state highway, Legislative Route Number 169;

THENCE from said beginning point and along the said dividing line between lots numbers 167 and 168, North 73 degrees 43 minutes West 800.00 feet to a point in line of lands contracted now or late to be conveyed by Behrens Realty, Inc. to Joseph M. Perugino, et al.;

THENCE from said point and along the line of said lands, North 16 degrees 17 minutes East, 200.00 feet to a point in the dividing line between lots numbers 168 and 169;

THENCE from said point and along the said dividing line, South 73 degrees 43 minutes East, 800.00 feet to a point in the aforesaid westerly side line of the Highway;

THENCE from said point and along the westerly side line of the Highway, South 16 degrees 17 minutes West, 200.00 feet to a point, the place of beginning.

CONTAINING 3.673 acres of land, be the same more or less, and being a part of a larger tract of land laid out in the Warrant name of James Morgan.

BEING all of Lot No. 168 on plot of lots known as "Oak Hill Park", Section "B", as developed for the Behrens Realty, Inc. by the Sturdevant-Dilley Engineering Company, Ltd. of Wilkes-Barre, Pennsylvania, a map of said plot dated April 29, 1957 being on file in the office of said company.

BEING the same premises conveyed to Geraldine J. Williams by Deed of Geraldine J. Williams, Administratrix of the Estate of Alice Firda, dated October 31, 1975 and recorded in the Office of the Recorder of Deeds in and for Luzerne County in Deed Book 1885 at Page 1197.

UNDER AND SUBJECT to the same reservations, conditions, restrictions, covenants, exceptions and easements as appear in prior chain of title.

PREMISES improved with a single family, ranch dwelling more commonly known as R.D.#1, Box 17B, Meadow Run Road, Oak Hill Park, Bear Creek, Luzerne County, Penna.

TOGETHER with all buildings and improvements thereon.

the same having been sold by me to the said grantee on the

SIXTH ---------- *Day of* FEBRUARY --------- *Anno Domini one thousand nine hundred and* EIGHTY-SEVEN ---------- *, after due advertisement according to law, under and by virtue of a writ* OF EXECUTION ---------- ---------- *issued on the* TWENTY-FOURTH ---------- *day of* OCTOBER ---------- *Anno Domini one thousand nine hundred and* EIGHTY-SIX ---------- *out of the Court of Common Pleas of the County of Luzerne, State of Pennsylvania, as of* ----------*Term, one thousand nine hundred and* EIGHTY-SIX ---------- *, Number* 405 ---------- *at the suit of* FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WILKES-BARRE, NOW KNOWN AS, FRANKLIN FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WILKES-BARRE

against GERALDINE J. WILLIAMS AND WOODROW W. WILLIAMS, JR., HER HUSBAND

said suit being No. 3807-C ---------- *Term, 19*86*, in said Court of Common Pleas of the County of Luzerne, Pennsylvania.*

In Witness Whereof, I have hereunto affixed my signature and seal of office this SEVENTEENTH ---------- day of FEBRUARY ---------- Anno Domini one thousand nine hundred and EIGHTY-SEVEN.

Frank J. Jagodinski Sheriff.

Commonwealth of Pennsylvania,
County of Luzerne } ss:

Before the undersigned, PROTHONOTARY ----------
of the Court of Common Pleas of Luzerne County, State aforesaid, personally appeared
FRANK J. JAGODINSKI ---------- , Sheriff of Luzerne
County aforesaid, and in due form of law declared that the facts set forth in the foregoing Deed
are true, and that he acknowledged the same in order that the said Deed might be recorded.
Witness my hand and the Seal of said Court, this SEVENTEENTH ----------
day of FEBRUARY ---------- Anno Domini one thousand nine hundred and
EIGHTY-SEVEN.

Eugene E. Duffy Prothonotary.

I hereby certify that the precise Name and Residence of the Grantee is:

Franklin First Federal Savings & Loan Association of Wilkes-Barre
Name

44 W. Market Street
Address

Wilkes-Barre, Luzerne, Pennsylvania
City, Borough or Township — County

Robert M. Daenberg
ROBERT M. DAENBERG, ESQ. Attorney for Grantee

RECORDED
STATE TAX PD.
FEB 17 ...

ARRE

ENTERED FOR RECO
at 1:25A M.
ARRE
FEB 17 1987

1103

Penna. Realty Tax
Affidavit Attached

Deed Poll.

FRANK J. JAGODINSKI

High Sheriff of Luzerne County,

—To—

FRANKLIN FIRST FEDERAL SAVING
& LOAN ASSOCIATION OF WILKES-
44 WEST MARKET STREET
WILKES-BARRE, LUZERNE COUNTY,
PENNSYLVANIA

Dated FEBRUARY 6, 1987

For PROPERTY IN BEAR CREEK
TOWNSHIP

Sold as the property of GERALDINE J.
WILLIAMS AND WOODROW W.
WILLIAMS, JR., HER HUSBAND

At the suit of FIRST FEDERAL SAVING
& LOAN ASSOCIATION OF WILKES-
N/K/A FRANKLIN FIRST FEDERAL
SAVINGS & LOAN ASSOCIATION OF
WILKES-BARRE

CONSIDERATION - - $2,324.56

ROBERT M. DANENBERG, ESQ.
15 SOUTH FRANKLIN STREET
WILKES-BARRE, PA. 18701

Recorded in the Office for the Recording of Deeds, etc., In and for Luzerne County, Pennsylvania in

Sheriff's Deed Book No. 2222 *Page* 756

Witness my hand and seal of office this 17th *day of* Feb *19* 87

Frank O'Boyle *Recorder.*

BOOK 2222 PAGE 753

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

WOODROW W. & GERALDINE WILLIAMS Case No.
87-4-0966
87-4-0093

Debtors

December 18, 1990

U.S. Bankruptcy Court
451 Hungerfor Drive
Rockville, Maryland
20850

H E A R I N G

On Motion for Modification of Stay

B e f o r e:

THE HONORABLE E. STEPHEN DERBY, Judge

A p p e a r a n c e s:

GERALDINE WILLIAMS, Pro Se
WOODROW W. WILLIAMS, JR., Pro Se
On behalf of the debtor

MARVIN WALDMAN, ESQUIRE
STEPHEN ROTH, ESQUIRE
MICHAEL CORDONE, ESQUIRE
On behalf of Franklin First Federal Savings Bank

BY MS. WILLIAMS:

Q. Are you aware that we made two calls to the president of the bnak at that time to discuss our problem and he was unable to resolve the two checks that we could not get credit for and the fact that Mr. Herenzi was threatening and proceeding even though we had the property since 1977, proceeding with the foreclosure and actually did file the papers? Are you aware of that?

A. **Your question, I believe, is am I aware of two telephone conversations with the president of Franklin First Federal?**

Q. Right.

A. I am.

Q. The contents of the conversation was regarding the dispute over the two payments?

A. **The conversation was between you and the president, Ma'am. I was in his office while you were talking to him so I have some recollection as to what transpired.**

Q. You testified as to two mortgages by First Union Mortgage and the Small Business Administration. Do you have any additional knowledge to share with this Court in regard to those instruments?

A. I do not.

Q. So you agree that there might be additional additions and additional knowledge which this Court should have in regard to those two instruments. You testified on behalf of another bank's instrument?

A. I testified, Ma'am, as to what those instruments were.

Q. Right.

A. That is all I can tell, what they appear to be to me.

Q. And they were on the record as of the foreclosure date of February 6, 1987?

A. That is correct.

Q. I want to show you -- when you were at the foreclosure or your representative was at the foreclosure on February 6th was there a representative from First Union Mortgage or SBA there, to your knowledge?

A. I don't recall.

Q. I'd like to introduce this as Exhibit A. Is this an order issued by Judge Gibbons of the Bankruptcy Court June 13, 1989?

A. Dated what day Ma'am?

Q. June 13, 1989.

A. That's correct.

Q. And in the order does it -- Judge Gibbons is ordering Franklin First Federal to convey the property back, is that correct?

A. "Ordered that Franklin First Federal Savings and Loan Association of Wilkes Barre shall reconvey the above stated real property to respondents/debtors."

Q. Are you aware of the fact that the debtors never received a copy of the deed and that as far as the debtors were concerned the bank had not complied with the order?

A. That I am not aware of, Ma'am.

Q. And that the keys were not released to the debtor to comply with that order?

A. To the best of my knowledge, Ma'am, the keys were released to your counsel at that time, together with the deed for recording.

Q. Are you aware of the letter that was written to Judge Gibbons requesting that -- informing him that the bank and its counsel did not compoy with his orders in October of 1989?

A. I'm not familiar with that.

Q. And it was after that -- Is it your understanding that it was in October that the keys were released to the debtor?

A. I don't recall that the keys were in issue. The keys are not part of this order. We were ordered to reconvey the property.

Q. All right. Well then, are you aware that -- do you agree that the debtors did not receive any deed as of October 1989?

A. I would have to see the actual deed, Ma'am.

MS. WILLIAMS: I would like permission to admit that into evidence as Exhibit A.

THE COURT: Do you have any objection Mr. Roth?

THE COURT: Well, I haven't the foggiest idea of what you're talking about or whether that's authentic or not. You need to prove it. The question is are you objecting to the deed?

MR. ROTH: Yes, I am.

THE COURT: The ground is what? It's not authentic or it is authentic?

MR. ROTH: Well, I haven't seen the deed.

THE COURT: Have you looked at the order?

MR. ROTH: Yes, I have, I don't have any objections.

THE COURT: Respondent's Exhibit 1 will be admitted, which is the court order dated June 13, 1989.

(Respondent's Exhibit No. 1 was marked for identification, was received in evidence.)

THE COURT: Respondent's Exhibit 2 should be marked as the Sheriff's deed.

(Respondent's Exhibit No. 2 was marked for identification.)

MS. WILLIAMS: Your Honor, that deed -- do you have any objection to the deed? It is an authentic deed, is that correct?

MR. ROTH: I have no objection as to its authenticity, I have an objection as to its introduction at this time.

THE COURT: On the grounds of materiality?

MR. ROTH: Yes.

THE COURT: We'll argue that later. I will admit the deed as Respondent's Exhibit 2.

(Respondent's Exhibit No. 2 previously marked for identification, was received in evidence.)

THE COURT: Please continue, Ms. Williams.

BY MS. WILLIAMS:

Q. Mr. Johnson, would you please identify this for the court?

A. That is a deed dated July 11, 1989 from Franklin First Federal Savings and Loan Association of Wilkes Barre, now known as Franklin First Federal Savings Bank to Geraldine J. Williams for property located in Bear Creek Township, Luzerne County for a consideration of $1.00.

Q. In where in that deed is there any mention of a mortgage or subsequent mortgage or bond or any consideration of further money?

A. In this instrument is there?

Q. Yes.

A. No, Ma'am.

MS. WILLIAMS: I would like permission to enter this as Exhibit 3.

THE COURT: Mr. Roth, do you have any objection to Exhibit 3?

MR. ROTH: No I don't, Your Honor.

(Respondent's Exhibit No. 3 was marked for identification, was received in evidence.)

THE COURT: For the record we will note that the Respondent's Exhibit 2 which was called the Sheriff's Deed was the same document that is attached to the debtor's objection to motion to modification of stay in number 1574 as Exhibit A. The letter was an unlettered attachment -- on Respondent's Exhibit 1 it was an unlettered attachment of that same response. So if you have the response you should have the documents so far. Mr. Roth. I haven't seen this next document.

BY MS. WILLIAMS:

Q. Mr. Johnson, upon the issuance of the deed complying with Judge Gibbon's order did Woodrow Williams or Geraldine Williams sign any mortgage with a

new date on it, any bond, any other instrument of money in consideration of the return of that property?

A. They did not.

MS. WILLIAMS: Thank you. I have no further questions, Your Honor.

THE COURT: Mr. Roth?

MR. ROTH: I have no more questions, Your Honor.

THE COURT: Mr. Johnson, you may step down, thank you.

(The witness was excused.)

EXHIBIT F

REV. 183 EX (9-84)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
POST OFFICE BOX 8910
HARRISBURG, PA 17105-8910

#783

REALTY TRANSFER TAX STATEMENT OF VALUE

See Reverse for Instructions

RECORDER'S USE ONLY
State Tax Paid
Book Number
Page Number
Date Recorded

Complete each section and file in duplicate with Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) when the deed is without consideration, or by gift, or (3) a tax exemption is claimed. A Statement of Value is not required if the transfer is wholly exempt from tax based on: (1) family relationship or (2) public utility easement. If more space is needed, attach additional sheet(s).

A CORRESPONDENT - All inquiries may be directed to the following person:

Name	Telephone Number:
ROSENN, JENKINS & GREENWALD BY: ROBERT SPIELMAN, ESQ.	Area Code (717) 826-5691

Street Address	City	State	Zip Code
15 South Franklin Street,	Wilkes-Barre,	PA	18711

B TRANSFER DATA

Date of Acceptance of Document

Grantor(s)/Lessor(s)	Grantee(s)/Lessee(s)
Franklin First Federal Savings and Loan Association of Wilkes-Barre n/k/a Franklin First Federal Savings Bank	Geraldine J. Williams
Street Address: 44 West Market Street	Street Address:
City: Wilkes-Barre; State: PA; Zip Code: 18773	City; State; Zip Code

C PROPERTY LOCATION

Street Address	City, Township, Borough
R. D. #1, Box 17B, Meadow Run Road Oak Hill Park	Bear Creek Township

County	School District	Tax Parcel Number
Luzerne	Wilkes-Barre Area	Plate No. 4-315-2-D1

D VALUATION DATA

1. Actual Cash Consideration	2. Other Consideration	3. Total Consideration
$1.00	+ 0	=$1.00
4. County Assessed Value	**5. Common Level Ratio Factor**	**6. Fair Market Value**
$8,450.00	x9.71	=$82,049.50

E EXEMPTION DATA

1a. Amount of Exemption Claimed	1b. Percentage of Interest Conveyed
100%	100%

2. Check Appropriate Box Below for Exemption Claimed

- ☐ Will or intestate succession _____ (Name of Decedent) _____ (Estate File Number)
- ☐ Transfer to Industrial Development Agency.
- ☐ Transfer to agent or straw party. (Attach copy of agency/straw party agreement).
- ☐ Transfer between principal and agent. (Attach copy of agency/straw trust agreement). Tax paid prior deed $ _____
- ☐ Transfers to the Commonwealth, the United States, and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (Attach copy of resolution).
- ☐ Transfer from mortgagor to a holder of a mortgage in default. Mortgage Book Number _____, Page Number _____.
- ☐ Corrective deed (Attach copy of the prior deed).
- ☐ Statutory corporate consolidation, merger or division. (Attach copy of articles).
- ☒ Other (Please explain exemption claimed, if other than listed above.) This transaction evidences a reconveyance of propert from a lender to a debtor subsequent to a foreclosu

The Bankrupty Court Order by Judge Gibbons has determined that the initial foreclosure transaction was void ab initio a matter of law and, therefore, is not subject to the transfer tax (Sabatine v. Commonwealth 442 A.2d 210)

Under penalties of law, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party	Date
ROSENN, JENKINS & GREENWALD BY: ROBERT SPIELMAN, ESQUIRE	

(SEE REVERSE)

No. 96-1926

Supreme Court, U.S.
FILED
JUL 3 1997
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Petitioners,

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY, SHERIFF'S DEPARTMENT OF LUZERNE COUNTY,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, Middle District

BRIEF IN OPPOSITION FOR RESPONDENT FRANKLIN FIRST FEDERAL SAVINGS BANK, n/k/a FRANKLIN FIRST SAVINGS BANK

DONALD H. BROBST
Counsel of Record
THOMAS B. CARPENTER
ROSENN, JENKINS
& GREENWALD, L.L.P.
Attorneys for Respondent Franklin First Federal Savings Bank, n/k/a Franklin First Savings Bank
15 South Franklin Street
Wilkes-Barre, Pennsylvania 18711
(717) 826-5600

71394 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

RULE 29.6 DISCLOSURE

Franklin First Savings Bank, f/k/a Franklin First Federal Savings Bank is a wholly owned subsidiary of OnbanCorp., Inc.

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APPENDIX

Appendix A — Opinion and Order of the Court of Common Pleas of Luzerne County, Commonwealth of Pennsylvania Entered May 5, 1995 ..... 1a

Appendix B — Memorandum and Judgment of the Superior Court of Pennsylvania Entered April 1, 1996 ..... 16a

Appendix C — Order of the Supreme Court of Pennsylvania, Middle District Denying Petition for Allowance of Appeal Entered January 17, 1997 ... 19a

Franklin First Federal Savings Bank, n/k/a Franklin First Savings Bank ("Franklin" or "Respondent"), by and through its counsel, Rosenn, Jenkins & Greenwald, L.L.P., submits this Brief in Opposition to the Petition of Geraldine Williams and Woodrow Williams, Jr. ("Williams" or "Petitioners"), for a Writ of Certiorari to the Supreme Court of Pennsylvania, Middle District seeking review of the judgment of that court entered on January 21, 1997.

COUNTERSTATEMENT OF CASE

Franklin commenced a mortgage foreclosure proceeding against the Petitioners on August 20, 1986, seeking to foreclose upon certain real estate owned by the Petitioners situated in Luzerne County, Pennsylvania. *In re Williams*, 100 B.R. 726 (Bankr. M.D. Pa. 1989). The property is commonly known as R.D. #1, Meadow Run Road, Oakhill Park, Bear Creek Township, Luzerne County, Pennsylvania ("Real Property"). The mortgage foreclosure action was filed because the Petitioners had ceased making mortgage payments to Franklin beginning with the payment due on April 22, 1986 (Resp. App. 4a-5a).

The Petitioners did not defend or otherwise contest the foreclosure proceeding and a judgment was entered against the Petitioners on October 24, 1986 to Term No. 3807-C of 1986 with the Court of Common Pleas of Luzerne County, Commonwealth of Pennsylvania ("Court of Common Pleas"). *Williams*, 100 B.R. at 726. No appeal was taken from the entry of this judgment, nor was a Petition to Open and/or Strike ever filed by the Petitioners.

The Real Property was listed for a foreclosure sale to be held on February 6, 1987. *Williams*, 100 B.R. at 726-27. On January 12, 1987, prior to the scheduled foreclosure sale, the Petitioner - Husband, Woodrow Williams, Jr., filed a Chapter

13 bankruptcy petition with the United States Bankruptcy Court for the District of Maryland [Rockville] to Case No. 874-0093. *Williams*, 100 B.R. at 726. Notice of this bankruptcy filing was not properly provided by the Petitioners or received by either Franklin or the Sheriff's Office of Luzerne County ("Sheriff"). *Williams*, 100 B.R. at 728. On February 6, 1987, Franklin was the successful bidder at the foreclosure sale with a bid of taxes and costs. The Sheriff subsequently delivered a deed to Franklin conveying title to the Real Property on February 17, 1987. *See* Petition, Exhibit D.

On May 13, 1987, the Petitioners, through legal counsel, filed a Petition to Set Aside Sale to Term No. 3807-C of 1986, with the Court of Common Pleas (Resp. App. 5a). The Petition to Set Aside Sale alleged that the foreclosure sale of the Real Property was in violation of the automatic stay provisions set forth in the Bankruptcy Code at 11 U.S.C. § 362. Upon Franklin's filing of a Notice to Remove Case, the Petition to Set Aside Sale was removed to the United States Bankruptcy Court for the Middle District of Pennsylvania ("Bankruptcy Court") by order of the Honorable Thomas C. Gibbons, dated November 9, 1987, docketed at Case No. 5-87-0126. *Williams*, 100 B.R. at 727.

The issue of whether or not there was a violation of the automatic stay and any resulting damages was fully litigated before the Bankruptcy Court. The applicable portion of automatic stay provision from the Bankruptcy Code is as follows:

> (h) An individual injured by any willful violation of a stay provided by this section shall recover damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(h).

The Bankruptcy Court issued an Order and Opinion on June 13, 1989 which stated ". . . that [Petitioners] have not met their burden of proving that Franklin took intentional or deliberate actions amounting to a 'willful' violation of the stay." *Williams*, 100 B.R. at 729. The Bankruptcy Court further stated ". . . we deny the [Petitioners'] request for damages against Franklin and the Sheriff's Office of Luzerne County because of the [Petitioners'] failure to show an intentional and willful violation of the automatic stay imposed by § 362 of the Bankruptcy Code." *Id.* Although the Bankruptcy Court found that Franklin was not liable for damages due to the lack of misconduct, the Bankruptcy Court ruled that since the foreclosure sale was subsequent in time to the filing of the bankruptcy petition, the sale must be "set aside." *Williams*, 100 B.R. at 728.

The Petitioners were dissatisfied with the decision of the Bankruptcy Court and filed an appeal to the United States District Court for the Middle District of Pennsylvania ("District Court") "regarding damages for [Petitioners] having been locked out of their premises for a period of more than two (2) years and damages for an unjustified foreclosure proceeding." The Bankruptcy Court granted an extension of time to allow Petitioners to perfect their appeal with the District Court (Resp. App. 7a). District Court Judge Edwin M. Kosik was assigned the Petitioner's appeal and the appeal was subsequently dismissed on September 6, 1989 (Resp. App. 7a). Within Judge Kosik's Memorandum Opinion he indicated that the appeal was "only from that part of bankruptcy judge's opinion which denied [Petitioners'] request for damages against [Franklin] and [the Sheriff's Office] because of their failure to show an intentional and willful violation of stay" (Resp. App. 7a-8a). Subsequent to Judge Kosik's decision, the Petitioners filed a Motion for Reconsideration and Reinstatement of the appeal. The Motion for Reconsideration was granted by Judge Kosik, but, on November 27, 1989, he once again denied Petitioners' appeal

(Resp. App. 8a). No further action was taken by the Petitioners to dispute the Bankruptcy Court ruling (Resp. App. 8a).

On June 13, 1990, less than seven months after the dismissal of the District Court appeal by Judge Kosik, the Petitioners initiated a separate proceeding by filing a Complaint for Damages ("Complaint") against Franklin with the Court of Common Pleas (Resp. App. 8a). An identical complaint was filed against the Sheriff of Luzerne County which was eventually consolidated by the trial court with this action. The Complaint was served upon Franklin on January 23, 1991, and sought to recover One Million Dollars ($1,000,000) in damages against Franklin and Sheriff for an alleged "willful and intentional violation of the automatic stay imposed by the Bankruptcy Code."

Franklin timely filed an Answer and New Matter to the Petitioners' Complaint asserting the doctrines of *res judicata* and collateral estoppel. Franklin asserted that the Petitioners were attempting to relitigate the issue of damages for an alleged "willful violation" of the bankruptcy stay previously litigated by the Petitioners through counsel in the Bankruptcy Court, which had resulted in a judgment on those issues in favor of Franklin by the Bankruptcy Court. In addition, Franklin's Answer refuted the Petitioners' contention that Franklin disobeyed the Bankruptcy Court's Order of June 13, 1989, by failing to reconvey the property to Petitioners. To the contrary, the property was reconveyed to Petitioners by deed on July 11, 1989 (recorded on July 14, 1989) found in Luzerne County Deed Book 2316, page 675, *et seq*. The Petitioners' allegations that they were denied access to the property are also incorrect. Franklin asserts that throughout the bankruptcy proceedings the Petitioners had access to the Real Property, and at no time did the Petitioners seek the access to the Real Property which they claim was denied to them.

On January 23, 1995, Franklin filed a Motion for Summary Judgment in that the claims raised by the Petitioners in the instant state action were previously decided by a court of competent jurisdiction (*res judicata*), as were the issues (collateral estoppel) and that Petitioners were barred from relitigating these claims and issues. The trial court held that no genuine issue of material fact existed, a finding not disputed by the Petitioners prior to the trial court's decision, and ruled that the Petitioners' claims were barred by the doctrines of *res judicata* and collateral estoppel (Resp. App. 8a-12a). The trial court accordingly entered judgment in Franklin's favor (Resp. App. 14a-15a).

The Petitioners appealed the decision of the Court of Common Pleas to the Superior Court of Pennsylvania ("Superior Court"). Briefs were prepared by both sides and oral arguments were held before the Superior Court on November 28, 1995. All parties were given ample time to argue their respective positions at that time. Upon consideration of the Petitioners' arguments and the extensive pleadings filed by both sides, the Superior Court entered a judgment on April 1, 1996, affirming the decision of the Court of Common Pleas (Resp. App. 18a). In its decision the Superior Court held that the "[Petitioners] had litigated the same matter before the United States Bankruptcy Court for the Middle District of Pennsylvania" and affirmed the trial court's entry of summary judgment on the basis of collateral estoppel and *res judicata* (Resp. App. 17a). The Petitioners filed an Application for Reargument/Reconsideration ("Application") with the Superior Court on April 10, 1996. The Petitioners' Application was denied on June 4, 1996.

The Petitioners further pursued this matter by filing a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania on June 28, 1996. Franklin filed a Brief in Opposition to Petition for Allowance of Appeal, and on January 17, 1997, the Pennsylvania Supreme Court entered an Order,

per curiam, denying the Petitioners' Petition for Allowance of Appeal (Resp. App. 19a).

The Petitioners then filed a Petition for Writ of Certiorari with the United States Supreme Court on June 4, 1997. This Brief is filed with this Court in opposition thereto.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I.

THE PETITION IS REPLETE WITH MISSTATEMENTS AND OMISSIONS OF FACT AND LAW.

Rule 15.2 of the Rules of the Supreme Court states ". . . the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted." Sup. Ct. R. 15.2. The Petition at issue contains numerous misstatements of fact and/or law.

The Petitioners repeatedly state that Franklin and/or its attorneys received notice of the Petitioners' initial bankruptcy filing. This is incorrect. The Bankruptcy Court found that the Petitioners did not meet their burden to establish that Franklin had actual notice of the bankruptcy filing. Specifically, the Bankruptcy Court stated that the Suggestion of Bankruptcy filed in the Prothonotary's Office of Luzerne County on February 3, 1987, was inadequate notice of the bankruptcy filing because the proper place to make the filing is in the Recorder of Deeds office. *Williams*, 100 B.R. at 728.

The Petitioners also state that they were denied access to the Real Property for over two years while Franklin was record owner of the property. This is also incorrect as the Petitioners

never requested access to the Real Property. Furthermore, the lock to the back door of the property was not changed; therefore, Petitioners had the ability to access the building.

The Petitioners further insist that Franklin did not abide by the Bankruptcy Court Order, dated June 13, 1989, setting aside the foreclosure sale as it allegedly did not transfer the Real Property back to the Petitioners until October 1989. In fact, the Deed returning the Real Property to Petitioners indicates that the Deed was executed on July 11, 1989, and recorded on July 14, 1989.

The Petitioners insist that the entry of summary judgment by the Court of Common Pleas was improper as there are genuine issues of material fact. The Court of Common Pleas granted summary judgment in favor of Franklin after providing the Petitioners the opportunity to respond (Resp. App. 14a). The Petitioners did not contest the assertion that there was no genuine issues of material fact. The Superior Court agreed with the findings by the Court of Common Pleas on summary judgment, including its finding that there were no genuine issues of material fact, and affirmed its decision (Resp. App. 18a).

The Petitioners further argue that the decision of the Bankruptcy Court does not bar their subsequent Complaint for damages. The Complaint filed by the Petitioners sought damages for "*willfully and intentionally* violating an automatic stay imposed by § 362 of the Bankruptcy Code . . ." (emphasis added). In response to Franklin's Summary Judgment Motion and over four (4) years after the Complaint was originally filed, the Petitioners changed their position and attempted to amend their Complaint to add "allegations of negligence or unintentional tortious violation of the provision of the automatic stay" (Resp. App. 12a). The Court of Common Pleas in its summary judgment opinion disagreed with the Petitioners and stated:

> . . . there is not the slightest hint of "unintentional" or "negligent" conduct on the part of [Franklin] in the [Petitioners'] Complaint. Nor has there been any such indication throughout the parties protracted litigation. Indeed, if [Petitioners] were now allowed to amend their Complaint to include such allegations, they would effectively be allowed to directly contradict both their allegations to date and their deposition testimony. Moreover, discovery in this instant matter having been completed and the matter having already been listed for trial and then removed from the trial list to enable the instant Motion for Summary Judgment to be decided we must conclude that allowing such an eleventh hour amendment would clearly prejudice [Franklin]. *Marcinko v. Strouse, et al.*, 94 Luzerne L.R. 63 (1994) and *Phillips, et al. v. Geisinger Wyoming Valley Center, et al.*, 85 Luzerne L.R. 83 (1995).

(Resp. App. 12a-13a).

Clearly, the Petitioners' allegation of an unintentional or negligent violation has been sufficiently addressed by the trial court, and subsequently reviewed and rejected as meritless by the Superior Court. The Pennsylvania Supreme Court denied the Petitioners' Petition for Allowance of Appeal (Resp. App. 19a).

An argument was also made by the Petitioners that summary judgment was improper as the Bankruptcy Court lacked jurisdiction to award damages for an unintentional or negligent violation of the stay. This is not true. If the Bankruptcy Court

had found the need to award damages for any type of stay violation, it had proper jurisdiction under 28 U.S.C. §§ 157(b)(2)(E), (G) and/or (O) and 1334. Despite having proper jurisdiction, the Bankruptcy Court specifically reviewed the actions of Franklin and awarded no damages to the Petitioners.

The Petitioners also reference Pa. R. Civ. P. 3133, 3135 and 3136 with the purpose of somehow showing that Franklin, as the recipient of a sheriff's deed, is liable for the "paying of taxes, maintaining the property and clearing of all liens of record against the sold property." Petition, p. 18. The Petitioners make this claim without any further reference to the content of these rules. In fact, Pa. R. Civ. P. 3133 ("Lien Creditor as Purchaser"), 3135 ("Sheriff's Deed to Real Property"), and 3136 ("Distribution of Proceeds") generally deal with the lien creditors' ability to receive a credit for the amount of its debt at a sheriff's sale, and the obligation of the sheriff to prepare a deed and schedule of distribution in a timely manner. These rules do not support the Petitioners' asserted obligation to pay taxes and satisfy liens which may have arisen after the foreclosure sale.

The Petitioners allege that they were denied a hearing in the Court of Common Pleas. This bald allegation is made without any explanation or support. In fact, the Petitioners have had a more than ample opportunity to litigate this matter in "open court." The Court of Common Pleas, after providing a full opportunity for all parties to present their positions, found that the Petitioners already fully litigated the allegations in their Complaint during the earlier proceedings held in Bankruptcy Court (Resp. App. 8a-12a). The Court of Common Pleas did not deny the Petitioners a hearing, but found that the claims presented in their Complaint were previously adjudicated and therefore, relitigation of the claims and issues was barred by the doctrines of *res judicata* and collateral estoppel.

The Petitioners also alleged that "Franklin has continued to harass Petitioners by continuing to send statements of monies due and interest charged." Petition, p. 27. There has been no harassment by Franklin. Franklin is not sending statements to the Petitioners. In fact, the Petitioners remain liable for this debt as neither of their bankruptcy proceedings resulted in a discharge order.[1]

Finally, the Petitioners have presented a listing of alleged damages. These calculations are without support or explanation. The Petitioners have never provided Franklin or the Court with any supporting documentation.

Petitioners' misstatement of law which are directly related to their arguments as to why this Court should exercise its discretionary jurisdiction over this case are discussed *infra*.

II.

THE PETITIONERS FAIL TO DEMONSTRATE ANY SPECIAL AND IMPORTANT REASON WHICH SUPPORTS THEIR REQUEST THAT THIS COURT EXERCISE ITS DISCRETIONARY JURISDICTION OVER THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA.

The granting of a writ of certiorari is discretionary. Sup. Ct. R. 10. There is not a right to the granting of a writ of certiorari. *Id.* Rule 10 of the Rules of the Supreme Court indicates that a petition for a writ of certiorari will only be granted for compelling reasons. The rule further states the Court considers appeals from a judgment of a state court when:

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1. In addition to the Chapter 13 case filed by Woodrow Williams, Jr., Geraldine Williams filed a separate Chapter 11 proceeding (No. 87-4-0966) in the United States Bankruptcy Court of the District of Maryland on April 20, 1987.

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
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> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10(b) and (c). Furthermore, the jurisdiction of the Supreme Court is set out by federal statute;

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). The jurisdictional constraints included in Section 1257(a) are to be strictly construed. *Palmore v. United States*, 411 U.S. 389, 396 (1973).

The Petitioners have failed to meet the jurisdictional requirements set forth in 28 U.S.C. § 1257(a) and have failed to satisfy any of the considerations for granting a writ of certiorari included in Rule 10. The Petitioners bear the burden to establish the Court's jurisdiction. *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 70-71 (1948). Any question as to the existence of jurisdiction are to be construed against the Petitioners. *Id.* at 71.

A. Petitioners Have Failed To Present A Question Of Federal Law.

The basis for Supreme Court jurisdiction is the existence of a "federal question." *St. Louis, I.M. & S. Ry. Co. v. Taylor*, 210 U.S. 281 (1908). Review by the Supreme Court is not intended to resolve any error in a state court proceeding, but merely to address the treatment of federal rights. *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 97 (1909). A federal question must be both real and substantial. *See Palmer Oil Corp. v. Amerada Petroleum Corp.*, 343 U.S. 390, 391-92 (1952); *Equitable Life Assurance Soc'y of United States v. Brown*, 187 U.S. 308, 311 (1902).

If a real and substantial federal question is presented to Supreme Court for review, it must first be established that this particular federal question was presented to the State Court and specifically addressed in rendering its decision. *Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). The record presented by the Petitioners must establish that the federal question was addressed by the state courts. *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77-78 (1988). Mere references to briefs or statements which are not part of the record transmitted to the Supreme Court are inadequate. *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 51 (1934).

If a federal question is presented to the Supreme Court, it will not be heard if the state court judgment to be reviewed rests on a state law principle that is *independent* from the proposed federal question and is alone an *adequate* basis for the state court's decision. *Bell v. Maryland*, 378 U.S. 226, 237 (1964); *Smith v. Smith*, 366 U.S. 210 (1961); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 129 (1945).

This is consistent with the premise that the Supreme Court may only review state court judgments that conflict with federal rights. *Zacchini v. Scripps - Howard Broad. Co.*, 433 U.S. 562, 566 (1977). A state law question is independent if it alone is dispositive of the case without the need to address a federal question, if any. *Jankovich v. Indiana Toll Road Comm'n*, 379 U.S. 487, 491-92 (1965). A state law question is adequate if it is of "sufficient breadth to support the judgment," *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931), and is a well settled state ground supported by the courts of the particular state. *Howlett v. Rose*, 496 U.S. 356, 366 n.14 (1990).

Neither the Supreme Court nor the lower federal courts have any authority to place a construction on a *state* statute or to interpret *state* law different than the interpretation rendered by the highest court of the state. *See, e.g., New York v. Ferber*, 458 U.S. 747, 767 (1982); *Exxon Corp. v. Department of Revenue of Wisconsin*, 447 U.S. 207, 226, n.9 (1980). This proposition, fundamental to our system of federalism, is applicable to procedural as well as substantive law. *Johnson v. Fankell*, 65 U.S.L.W. 4438, 4440 (June 9, 1997); *see Wardins v. Oregon*, 412 U.S. 470, 477 (1973). Thus, the decision of the Pennsylvania Courts on the exclusively state law questions involved in the case at bar cannot provide a basis for this Court's exercise of its discretionary jurisdiction to review federal law questions.

The Questions Presented for Review by the Petitioners are

precluded from the jurisdiction of the Supreme Court because they fail to present a real and substantial federal question as required under 28 U.S.C. § 1257(a) and Supreme Court Rule 10. To the extent the Petitioners have attempted to create a federal question, they have been unsuccessful as the state court judgment is based solely on state law. As demonstrated *infra* by the analysis of each of the Questions Presented For Review by Petitioners, there is no federal law question for this court to review. In the absence of any federal question, let along an important federal question, there is no basis for the exercise of this court's jurisdiction with respect to this matter.

> 1. Is Franklin responsible under the law for extensive damage that had occurred to the property while Franklin was in possession of the property in question by virtue of a Deed of Trust issued by the Sheriff to Franklin?

The Supreme Court cannot rule on this issue as it does not invoke any real and substantial federal question. Rather; the issue is solely one pertaining to state real property law.

> 2. Is Franklin responsible for real estate taxes due and payable while Franklin had the property in their possession for three years by virtue of a Deed of Trust issued by the Sheriff's Department to Franklin?

Again, the Supreme Court does not have jurisdiction to review this question as it exclusively involves issues of state real estate and property tax law. The Petitioners have not raised a real and substantial federal question.

> 3. Is the Sheriff's Department responsible

for allowing a wrongful foreclosure after the Sheriff's Department received Notice of Bankruptcy?

While this question is not directed at Franklin, but a co-defendant, Luzerne County Sheriff, it should be noted that there were no findings in the record that the Sheriff received any notice of bankruptcy by the Petitioners. The issue of notice under the Bankruptcy Code was specifically addressed in a separate bankruptcy proceeding. *See Williams*, 100 B.R. at 728. Because this issue and other issues presented by the Petitioners were already litigated among the same parties in a prior proceeding, the Court of Common Pleas held that the Petitioners' current action is barred by the doctrines of collateral estoppel and *res judicata* (Resp. App. 14a-15a). This decision was upheld by the Superior Court (Resp. App. 18a); the Pennsylvania Supreme Court denied Petitioners' request to review the Superior Court decision (Resp. App. 19a). There is no real and substantial federal question presented by the Petitioners as the issue was decided solely on the independent and adequate state law basis of collateral estoppel and *res judicata*. A state court judgment of estoppel barring a party from rehearing an action is an independent and adequate state ground which precludes Supreme Court jurisdiction. *See Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 163-66 (1917); *Leonard v. Vicksburg Shreveport Pac. R.R. Co.*, 198 U.S. 416, 422-23 (1905); and *Hale v. Lewis*, 181 U.S. 473, 479 (1901).

4. Whether the lower courts improperly applied the Standards of Law regarding the automatic stay under the applicable Bankruptcy Code, 11 U.S.C. 362, afforded to the petitioner in a bankruptcy proceeding. The lower court completely ignored the issues of Franklin and the Sheriffs'

> Department having been served notice of a bankruptcy proceeding and after notice of bankruptcy having gone forward with a foreclosure without a Lift Stay Hearing. A Federal Judge by Order of the Court, ordered real property returned to the Petitioners declaring that the foreclosure sale of said property by Franklin and the Sheriff's Department was invalid and shall be set aside with all expenses to be born by Franklin.
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> 11 U.S.C. 362 states that an individual injured by a violation of the automatic stay shall recover actual damages, including costs and in appropriate circumstances, may recover punitive damages.

The Petitioner again has presented an inappropriate issue for review by the Supreme Court. Factually, the Petitioners are inaccurate by insisting that Franklin and the Sheriff's Department conducted a Sheriff's sale of the Real Property after receiving notice of bankruptcy. There is no finding of actual receipt of a bankruptcy notice by either Franklin or the Sheriff.

The legal issues presented by the Petitioners involve the application of 11 U.S.C. § 362 which was thoroughly addressed in separate proceedings by the Bankruptcy Court. *Williams*, 100 B.R. at 728-29. The appeal of this decision was dismissed by the District Court. Petitioners never further appealed the decision of the District Court. Instead, they chose to start this new action in state court and presented this same issue to the Court of Common Pleas which ruled that the Petitioners were estopped from retrying these issues based on the independent and adequate state law principles of collateral estoppel and *res judicata*. *See Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S.

at 163-66; *Leonard v. Vicksburg Shreveport & Pac. R.R. Co.*, 198 U.S. at 422-23; *Hale v. Lewis*, 181 U.S. at 479. This ruling of the Court of Common Pleas has been affirmed by the Superior Court (Resp. App. 18a), and the Petitioners' request for allowance of appeal (allocatur) was denied by the Pennsylvania Supreme Court (Resp. App. 19a). It is inappropriate for the Supreme Court to review these state law determinations.

> 5. Whether the lower court misinterpreted Pennsylvania Rules 3133, 3135 and 3136, which state that by accepting a valid Sheriff's Deed, Franklin had the sole responsibility of paying the taxes, maintaining the property and clearing all liens of record against said property. Franklin had the property in their possession for three years before Judge Gibbons, in Federal Bankruptcy Court, returned the property to the Petitioners. For this period of three years, real estate taxes fell into arrears and the property was permitted to suffer waste and deterioration.

The Petitioners have misrepresented the purpose of Pa. R. Civ. P. 3313, 3315 and 3136. Rule 3133 allows a lien creditor to receive a credit for the amount of the indebtedness due to them against the purchase price if the lien creditor is the successful bidder at the Sheriff's sale. Rule 3135 requires the Sheriff to deliver a deed to the successful purchaser, if there are no objections, within ten (10) days after the filing of the schedule of distribution. Rule 3136 requires the Sheriff to prepare a schedule of distribution within thirty (30) days of the Sheriff's sale of Real Property. None of these rules have anything to do with the alleged obligation of a purchaser to the former owner to maintain taxes and to clear all liens created subsequent to the Sheriff's sale.

Moreover, the Supreme Court has no jurisdiction over these state law issues which pertain to the proper interpretation of *state* court rules of civil procedure. *Johnson v. Fankell*, 65 U.S.L.W. 4438, 4440 (June 6, 1997).

> 6. Whether the lower court misinterpreted and skated the issues that there never was a trial afforded the Petitioners, that the Petitioners were denied a hearing in open court in the Court of Common Pleas of Pennsylvania, Luzerne County, and that the Respondents misrepresented to the Panel of the Superior Court in Philadelphia the value of the property.

Initially, it is disputed that Franklin misrepresented the value of the Real Property to the Superior Court. Furthermore, the issue of value is totally irrelevant to the current case. The Petitioners additional suggestion that they were somehow improperly denied a hearing is also false. The parties to the case each had a full opportunity to express their respective positions to the Court of Common Pleas. In fact, the case sat in the Court of Common Pleas for over four (4) years before a Motion for Summary Judgment was filed by Franklin.

The Petitioners are merely dissatisfied with the trial courts' ruling on Franklin's Motion for Summary Judgment which barred a relitigation of their claim under state law principles of collateral estoppel and *res judicata*. As previously discussed, this is an independent and adequate state law basis for the resolution of this matter which fails to raise any federal question.

> 7. Whether the lower court improperly applied the Standards articulated in *Federoff v. Harrison Constr. Co.*, 163 Pa. Super. 53,

> 60 A.2d 334 (1948), where it was held that negligence can be justifiably inferred and warranted where proof of an intentional act is insufficient and the harm is the same whether the breach of duty to the Petitioners by Respondents was intentional or unintentional; and in *Beardell v. Western Wayne Sch. Dist.*, 91 Pa. Commw. 348, 496 A.2d 1373 (1985), where it was held that the trial court abused its discretion in not allowing the pleadings to be amended to allow full development of a party's theories and averments.

The Petitioners mistakenly cite inapplicable case law from state courts in the Commonwealth of Pennsylvania. The Superior Court in *Federoff v. Harrison Constr. Co.*, 163 Pa. Super. 53, 60 A.2d 334 (1948) merely holds that there was sufficient evidence at trial to support the court's finding of negligence by the defendant relating to concussion damage resulting from blasting activities. The Petitioners incorrectly suggest that this case somehow subjects Franklin to claims of negligence. The reliance on this case by the Petitioners is misplaced. The *Federoff* case involves a matter where the plaintiff alleged in its complaint that the defendant was negligent in its blasting activities and the plaintiff was seeking damages resulting from this negligence. *Federoff*, 163 Pa. Super. at 54. In the current case, the Petitioners never alleged negligence by Franklin. Both the Petition to Set Aside Sale adjudicated by the Bankruptcy Court and the Complaint filed with the Court of Common Pleas alleged intentional and deliberate acts by Franklin. The Petitioners did not even suggest that Franklin was negligent until they submitted their response to Franklin's Motion for Summary Judgment in the Court of Common Pleas over four (4) years after their Complaint was filed. This issue was specifically addressed by

the Court of Common Pleas. Judge Mundy denied the Petitioners request to amend their Complaint to include a negligence count as it was untimely, unduly prejudicial to Franklin, and in conflict with all of the pleadings and testimony of the Petitioners in both the case at bar and the former Bankruptcy Court proceedings (Resp. App. 12a-13a). Additionally, the statute of limitations to bring a negligence action had expired by the time the Petitioners requested leave to amend their Complaint.

The Petitioners also incorrectly interpret the Pennsylvania Commonwealth Court case of *Beardell v. Western Wayne Sch. Dist.*, 91 Pa. Commw. 348, 496 A.2d 1373 (1985). The *Beardell* case involved a Motion for Judgment on the Pleadings whereby the appellate court stated that the trial court abused its discretion by denying the plaintiff's request to amend its complaint. *Beardell*, 496 A.2d at 1375-76. The amendment sought in the *Beardell* case was merely factual regarding the classification of a certain piece of property as either real or personal property. The proposed amendment was not related to the underlying cause of action and was not prejudicial to the defendant. In the instant case, the Petitioners were not merely proposing a clarification of a fact, but instead were seeking to insert an entire new cause of action against Franklin after more than four (4) years of litigation and after the statute of limitations had expired as to the new theory. The Court of Common Pleas correctly denied the Petitioners' request to amend the Complaint.

Moreover, the Court of Common Pleas' denial of the Petitioners' request to amend their Complaint fails to raise any federal question. The issues are solely state law questions which do not fall within the jurisdiction of the Supreme Court.

B. Petitioners Do Not Present An Important And Substantial Question Of Federal Law.

The final question presented for review by the Petitioners raises a federal question, but not a substantial one; indeed there is well-established Supreme Court precedent which makes clear that Petitioners' argument is wholly without merit. Petitioners' final issue presented for review states:

> 8. The denial of Appeal by The Supreme Court of Pennsylvania, Middle District, is contradictory to Amendment XIV of the United States Constitution, which provides:
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> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside or their property is located. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The denial of the Petitioners' Petition for Allowance of Appeal by the Pennsylvania Supreme Court is not in violation of the Fourteenth Amendment to the United States Constitution. As with this court, the allowance of an appeal to the Pennsylvania Supreme Court is discretionary, 42 Pa. C.S.A. § 724(a) and 5105(b); and Pa. R. App. P. 1114. In deciding whether to hear an appeal, the Pennsylvania Supreme Court considers such factors as whether the lower court decision conflicts with other lower appellate court decisions, conflicts with previous decisions

of the Pennsylvania Supreme Court or the United States Supreme Court, presents a question of first impression, involves issues of immediate public importance, or raises issues which require the exercise of the Pennsylvania Supreme Court's supervisory authority over the Pennsylvania lower courts. Pa. R. App. P. 1114 (note).

The due process clause of the fourteenth amendment does not require a state to provide appellate review. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972); *District of Columbia v. Clawans*, 300 U.S. 617, 627 (1937); *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 524 (1931); *Ohio ex rel. Bryant v. Akron Metro. Park Dist. for Summit County*, 281 U.S. 74, 80 (1930); *Luckenbach S.S. Co. v. United States*, 272 U.S. 533, 536 (1926). The appeals process is a privilege created by statute in which the litigant must adhere to the applicable rules in order to utilize that privilege. *Chanosky v. City Bldg. Supply Co.*, 152 Conn. 449, 208 A.2d 337, 339 (1965). A state may establish its own rules of appellate procedure and there is no violation of the United States Constitution by a state's insistence that all parties abide by such rules. *Meyer v. Hawaii*, 164 F.2d 845, 850 (9th Cir. 1947), *cert. denied*, 333 U.S. 860 (1948).

In the current case the Petitioners have taken full advantage of this "privilege" of appeal. After the Court of Common Pleas rendered its decision, the Superior Court reviewed the trial court's decision and rendered a decision affirming the Common Pleas Court's decision. The Petitioners were correctly denied leave to appeal by the Pennsylvania Supreme Court. The Petitioners' appeal obviously does not meet the criteria for the granting of a discretionary appeal set forth in the annotation to Pa. R. App. P. 1114.

The Pennsylvania Supreme Court's refusal to exercise its

discretionary appellate jurisdiction did not violate the due process clause of the Fourteenth Amendment to the United States Constitution. Petitioners' assertion that the Pennsylvania Supreme Court's refusal to grant review of their case violates the Fourteenth Amendment is contrary to well-settled constitutional law and fails to present a substantial question for this Court's review.

CONCLUSION

For all the reasons stated above, the Williams' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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ROSENN, JENKINS
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APPENDIX A — OPINION AND ORDER OF THE COURT OF COMMON PLEAS OF LUZERNE COUNTY, COMMONWEALTH OF PENNSYLVANIA ENTERED MAY 5, 1995

In the Court of Common Pleas of
Luzerne County

CIVIL ACTION - LAW

No. 3342-C of 1990

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Plaintiffs

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Defendants

OPINION

This matter comes before the court on identical Motions for Summary Judgment filed by Defendant, Franklin First Federal Savings Bank ("Franklin First"), and Defendant, Sheriff of Luzerne County ("Sheriff's Office") on January 23, 1995. Plaintiffs, Geraldine Williams and Woodrow Williams, Jr. ("Plaintiffs") filed their Brief Contra Defendants' Motions for Summary Judgment on February 28, 1995. Oral argument on Defendants' Motions for Summary Judgment was conducted on April 24, 1995, and this opinion follows.

A review of the procedural history of the above captioned

matter demonstrates that the pleadings are closed, and, therefore, that Defendants' Motions for Summary Judgment are timely filed and pursued under Pa.R.C.P. 1035(a). 6 Standard Pennsylvania Practice 2d, §32:12.

Standards Governing Motions for Summary Judgment

Under Pa.R.C.P. 1035(b), a motion for summary judgment can be granted only where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Carringer v. Taylor*, 402 Pa.Super. 197, 586 A.2d 928 (1990); *Consumer Party of Pennsylvania v. Commonwealth of Pennsylvania*, 510 Pa. 158, 507 A.2d 323 (1986), *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979), *Linwood Harvestore, Inc. v. Cannon*, 427 Pa. 434, 235 A.2d 377 (1967), *Vosburg v. Connolly*, 80 Luzerne L.R. 56 (1990), and *Densberger v. Keystone Welfare Fund*, 81 Luzerne L.R. 207 (1991).

Summary judgment can be granted only in the clearest of cases, *Mallesky v. Stevens*, 427 Pa. 352, 235 A.2d 154 (1967), in which there is not the slightest doubt as to the absence of a triable issue of fact, *Prince v. Pavoni*, 225 Pa.Super. 286, 302 A.2d 452 (1973), *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205 (1991), *Sipple v. Ideal Industries, Inc.*, 82 Luzerne L.R. 80 (1992), and *Ralston et al. v. Larock et al.*, 83 Luzerne L.R. 28 (1992).

In considering a motion for summary judgment, the court must examine the record in the light most favorable to the nonmoving party, determine whether any genuine issues of material fact exist, and resolve all doubts in favor of the nonmoving party, *Marks v. Tasman, supra, Helf v. Neft*, 352

Appendix A

Pa.Super. 195, 507 A.2d 839 (1986), *Gresko v. Freifeld*, 81 Luzerne L.R. 14 (1990), *Minnig v. Hazleton St. Joseph Medical Center*, 81 Luzerne L.R. 107 (1991), *Rocky Glen Park, Inc. v. G. T. Enterprises, Inc. & Gabriel Warshawsky*, 81 Luzerne L.R. 82 (1991), *Ryder Truck Rental, Inc. v. Maryland Casualty Company*, 81 Luzerne L.R. 126 (1991), and *Erie Insurance Exchange v. Bronsburg and Hughes, Inc., et al.*, 82 Luzerne L.R. 45 (1992).

The moving party bears the burden of establishing that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Burko v. Commonwealth of Pennsylvania, et al.*, 81 Luzerne L.R. 112 (1991), and *Garcia v. Savage*, 402 Pa. Super. 314, 596 A.2d 1375 (1991).

In order to demonstrate entitlement to summary judgment, the moving party must meet a demanding burden of proof, described in *Laventhol & Horwath v. Dependable Insurance Associates, Inc.*, 396 Pa.Super. 553, 558, 579 A.2d 388, 390 (1990), alloc. den. 593 A.2d 413, 593 A.2d 419, 593 A.2d 420, as follows:

> Summary judgment may properly be entered only if the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.Civ.P. 1035(b). The moving party has the burden of persuading the court that no genuine issues exist as to the material facts. Summary

> judgment may be entered only where the case is free from doubt. [citations omitted] In passing upon a motion for summary judgment, moreover, the court must examine the record in the light most favorable to the non-moving party. Any doubt must be resolved against the moving party.

See also: *Thompson Coal Co. v. Pike Coal Co., supra; Ducjai v. Dennis*, 342 Pa.Super. 366, 636 A.2d 1130 (1994); *Noll v. Clear Brook Lodge, Inc.*, 82 Luzerne L.R. 138 (1992); and 6 Standard Pennsylvania Practice 2d, Section 32:43.

Procedural Background

The record before us demonstrates that the present matter is a culmination of protracted and intermingled litigation related to (1) bankruptcy proceedings pursued by Plaintiffs; and (2) mortgage foreclosure proceedings initiated by Franklin First with respect to real property owned by Plaintiffs and located in Bear Creek Township, Luzerne County, Pennsylvania ("the mortgaged property"). The history of this litigation can be summarized as follows:

Plaintiffs, owners of the mortgaged property, in consideration of a $25,000 loan made by Franklin First to Plaintiffs, executed and delivered to Franklin First a promissory note in the amount of $25,000 and a mortgage which created a first lien on the mortgaged property and which was recorded on August 19, 1977, in Luzerne County Mortgage Book 1192 at page 13.

Alleging Plaintiffs stopped making payments on the

mortgage in or after April 1986, and were in default on the mortgage, Franklin First initiated mortgage foreclosure proceedings on August 8, 1986 ("the mortgage foreclosure proceedings"), which action was filed to No. 3807-C of 1986 in the Court of Common Pleas of Luzerne County. Judgment was entered against Plaintiffs, a Writ of Execution was issued, and a Sheriff's sale of the premises was scheduled for February 6, 1987.

On January 12, 1987, Plaintiff, Woodrow Williams, Jr., filed a voluntary Chapter 13 proceeding in the United States Bankruptcy Court for the District of Maryland (Rockville) to Case Number 87-4-0093.

On February 3, 1987, Plaintiff, Woodrow Williams, Jr., filed a "Suggestion of Bankruptcy" in the Luzerne County Prothonotary's Office in the mortgage foreclosure of proceedings, notifying the court of the automatic stay of civil proceedings provided by the bankruptcy proceedings.

On February 6, 1986, the Sheriff's sale was conducted, and the mortgaged property was conveyed to Franklin First by Sheriff's deed dated and filed on February 17, 1987.

On April 20, 1987, Plaintiff, Geraldine Williams, filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the District of Maryland (Rockville) to Case No. 87-4-0966.

On May 13, 1987, Plaintiffs filed a petition in the mortgager foreclosure proceedings to set aside the sheriff's sale and to strike the sheriff's deed.

Appendix A

On June 2, 1987, Brominski, J. enter an Order in the mortgage foreclosure proceedings continuing the mortgage foreclosure action and enjoining Plaintiffs from selling or disposing of the mortgaged property, pending the disposition of Plaintiff's Petition for Removal of the action by the United States District Court.

The United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Gibbons, J. dated November 9, 1987, removed Plaintiff's petition to set aside the sheriff's sale and to strike the sheriff's deed from the Court of Common Pleas of Luzerne County, and transferred the litigation to the Middle District of Pennsylvania, the case being assigned the docket number of Term No. 5-87-0126.

Franklin First filed a motion with the United States District Court for the Middle District of Pennsylvania requesting a determination of the validity of a post-bankruptcy petition transfer of debtor's interest in real property and for denial of debtor's motion to set aside a foreclosure sale.

The United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Gibbons, J. dated June 13, 1989, entered judgment in favor of Plaintiffs and against Franklin First, declared the sheriff's sale of the mortgaged property invalid, and ordered Franklin First to reconvey the mortgaged property to Plaintiffs. In an accompanying opinion, Gibbons, J. held: (1) that the foreclosure sale of the mortgaged property, taking place after the bankruptcy petition was filed, was an invalid transfer under the Bankruptcy code; (2) that filing the suggestion of bankruptcy in the Luzerne County Prothonotary's Office, rather than the Luzerne County Recorder of Deeds Office, did not give Franklin sufficient notice of the bankruptcy

filing; (3) that Plaintiffs made a confused factual presentation concerning their attempts to notify Franklin of the bankruptcy proceedings; and (4) that Plaintiffs failed to meet their burden of proving Franklin First took intentional or deliberate actions amounting to a "willful" violation of else stay created by the bankruptcy proceedings. Consequently, United States Bankruptcy Court for the Middle District of Pennsylvania, denied Plaintiffs' request for damages against Franklin First and the Sheriff's Office.

Dissatisfied with the decision of Gibbons, J., Plaintiffs on June 21, 1989, filed an extension of time to file an appeal.

On July 11, 1989, Franklin First reconveyed the mortgaged property to Plaintiff, Geraldine Williams, the deed being recorded in the Luzerne County Recorder of Deeds office in Deed Book 2316 at page 978.

On July 13, 1989, Plaintiffs' request for an extension of time to file an appeal was granted by United States Bankruptcy Court for the Middle District of Pennsylvania. In a supporting memorandum, the court questioned Plaintiffs' "misrepresentations" concerning their representation by counsel in the bankruptcy proceedings and the mortgage foreclosure action. While Plaintiffs' were granted the above described extension of time to appeal from the Order of Gibbons, J. Plaintiffs took no further action on the appeal.

On September 6, 1989, United States Bankruptcy Court for the Middle District of Pennsylvania, via the Order of Kosik, J. dismissed Plaintiffs' appeal from the final Order of Gibbons J. dated June 13, 1989. In an accompanying Memorandum, Kosik, J. (1) observed that Plaintiffs' appeal was "only from that part

of the bankruptcy judge's opinion which denied debtors request for damages against [Franklin First] and [the Sheriff's Office] because of their failure to show an intentional and willful violation of stay," and (2) questioned the candor of Plaintiffs with respect to their being represented by counsel and their dilatory conduct in filing the record on appeal, the statement of issues, and brief. Citing Plaintiffs' "apparent misrepresentations and disregard for the procedures," the court dismissed Plaintiffs' appeal from the Order of Gibbons, J.

On November 27, 1989, Kosik, J. granted Plaintiffs' pro se motion for reconsideration, reviewed his earlier Memorandum, and concluded the dismissal of Plaintiffs' appeal was valid. No further appeal was taken by Plaintiffs in the bankruptcy proceedings.

On June 13, 1990, Plaintiffs filed the instant action, in which they seek compensation from Defendants in the form of compensatory and punitive damages, because Defendants (1) "willfully and deliberately and illegally" foreclosed on the mortgaged property despite the notice of bankruptcy proceedings, (2) denied Plaintiffs' access to the mortgaged property, failed to pay the property taxes, and allowed the mortgaged property to deteriorate, during the period February 6, 1987 to October 1989, and (3) failed to reconvey the property to Plaintiffs until October 1989, despite the Order of Gibbons, J. dated June 13, 1989.

Resolution of Motion for Summary Judgment

Defendants argue they are entitled to summary judgment because Plaintiffs' claim is barred by the doctrines of collateral estoppel or *res judicata.* We must agree.

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The doctrine of collateral estoppel (or issue preclusion) prohibits the relitigation of the same issues previously decided. The criteria governing the application of collateral estoppel are described in *Matternas v. Stehman*, __ Pa.Super. __, 642 A.2d 1120, 1125 (1994), as follows:

> Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privily with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is assumed had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment. (cit. omitted).

As the above recited procedural history demonstrates, the criteria for the application of collateral estoppel have been fulfilled. To begin with, the issue decided in the bankruptcy proceedings was that Plaintiffs failed to meet their burden of proving Franklin First took intentional or deliberate actions amounting to a "willful" violation of the stay created by the bankruptcy proceedings. In the present action, the issue which ultimately must be decided by the court is whether Plaintiffs have established Defendants "willfully and deliberately and illegally" foreclosed on the mortgaged property, despite the existence of the stay provided by the bankruptcy proceedings. Hence the issue decided in the bankruptcy proceeding is identical to the issue presented in the present action.

Second, because Plaintiffs' have not appealed from the order of, Kosik, J. dated November 27, 1989, there has been final judgment on the merits of the issue of whether Plaintiffs met their burden of proving Defendants willfully violated the stay created by bankruptcy proceedings.

Third, Plaintiffs were parties to the bankruptcy proceedings in which the issue of Defendant's willful violation of the stay created by bankruptcy proceedings was resolved.

Finally, Plaintiffs had a full and fair opportunity to litigate the issue of Defendant's willful violation of the stay in the bankruptcy proceedings.

Hence we must conclude: (1) that the elements of collateral estoppel have been fulfilled: (2) that, while Plaintiffs had the opportunity in the bankruptcy proceedings, they failed to establish willful and deliberate action on the part of Defendants in pursuing the mortgage foreclosure contrary to the stay provided by the bankruptcy proceedings, and (3) Plaintiffs should not be given a second opportunity to pursue the same issue in the present action.

The doctrine of *res judicata* (or claim preclusion) precludes the litigation of claims that have previously been litigated. As noted in *Matternas v. Stehman*, __ Pa.Super. __, 642 A.2d 1120, 1123 (1994):

> Where there has previously been rendered a final judgment on the merits by a court of competent jurisdiction, the doctrine of *res judicata* will bar any future suit on the same cause of action between the same parties. *See*

Appendix A

> *10 Standard Pennsylvania Practice 2d* §65:32. Invocation of the doctrine of *res judicata* (claim preclusion) requires that both the former and latter suits possess the following common elements: 1. identity of the thing sued upon: 2. identity in the cause of action; 3. identity of persons and parties to the action; and 4. identity of the capacity of the parties suing or being sued. (cit. omitted).

We must conclude the claim in the prior action is identical to the claim presented in the present action. To begin with, the matter being sued upon — the actions of Defendants in proceeding with the mortgage foreclosure action despite the filing of the notice of bankruptcy proceedings — is the same in both bankruptcy proceedings and the instant proceedings.

Second, in the bankruptcy proceedings, Plaintiffs unsuccessfully pursued the claim that Franklin First took intentional or deliberate actions amounting to a "willful" violation of the stay created by the bankruptcy proceedings. In the instant action, Plaintiffs claim that Defendants "willfully and deliberately and illegally" foreclosed on the mortgaged property despite the notice of bankruptcy proceedings. Hence the causes of action in both actions are identical, a matter directly confirmed by the deposition testimony of Plaintiffs.

More particularly, Plaintiff, Geraldine Williams, testified that she sought damages for Defendants' fraudulent actions in depriving her of her property despite the existence of the automatic stay provided by bankruptcy proceedings (D.T. 28); and that Franklin First "conducted their own fraudulent activity"

in undertaking an "illegal-foreclosure" of the mortgaged property in that Franklin First has notice of the bankruptcy but proceeded with the foreclosure (D.T. 41-42). Plaintiff, Woodrow Williams, testified that the illegal foreclosure deprived Plaintiffs of the use of the mortgaged property for over two years (D.T. 5-6); and that the foreclosure was illegal, because he had filed notice of the bankruptcy proceedings (D.T. 43, 59).

Third, the parties in both the bankruptcy proceedings — as confirmed by the above summarized opinions and memoranda issued by the Federal District Court for the Middle District of Pennsylvania — and the instant matter are identical.

Finally, the capacity of the parties in both the bankruptcy proceedings and the instant matter are identical.

Consequently, we must conclude that Plaintiffs' cause of action in the instant matter is also precluded by the doctrine of *res judicata.*

In this regard, Plaintiffs argue that Defendants' action in proceeding with the foreclosure action despite the stay provided by the bankruptcy proceedings might have resulted from "unintentional tortious conduct." Hence, Plaintiffs contend, they should be allowed "to amend their Complaint to add allegations of negligence or unintentional tortious violation of the provision of the automatic stay."

We cannot agree. To begin with, there is not the slightest hint of "unintentional" or "negligent" conduct on the part of Defendants in Plaintiffs' Complaint. Nor has there been there any such indication throughout the parties protracted litigation. Indeed, if Plaintiffs were now allowed to amend their Complaint

to include such allegations, they would effectively be allowed to directly contradict both their allegations to date and their deposition testimony. Moreover, discovery in the instant matter having been completed and the matter having already been listed for trial and then removed from the trial list to enable the instant Motion for Summary judgment to be decided, we must conclude that allowing such an eleventh hour amendment would clearly prejudice Defendants. *Marcinko v. Strouse et al.*, 94 Luzerne L.R. 63 (1994) and *Phillips et al., v. Geisinger Wyoming Valley Center et al.*, 85 Luzerne L.R. 83 (1995)

Accordingly, we enter the following

Appendix A

In the Court of Common Pleas of
Luzerne County

CIVIL ACTION - LAW

No. 3342-C of 1990

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Plaintiffs

vs.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Defendants

ORDER

Now, this 5th day of May, 1995, at 10 o'clock' A.M., it is hereby ORDERED, ADJUDGED AND DECREED:

(1) The Motion for Summary Judgment filed by Defendant, Franklin First Federal Savings Bank, on January 23, 1995, is hereby GRANTED.

(2) Judgment is hereby entered in favor of Defendant, Franklin First Federal Savings Bank, and against Plaintiffs, Plaintiffs, Geraldine Williams and Woodrow Williams, Jr., with respect to the claims contained in their Complaint filed on June 13, 1990.

Appendix A

(3) The Motion for Summary Judgment filed by Defendant, Sheriff of Luzerne County, on January 25, 1995, is hereby GRANTED.

(4) Judgment is hereby entered in favor of Defendant, Sheriff of Luzerne County, and against Plaintiffs, Plaintiffs, Geraldine Williams and Woodrow Williams, Jr., with respect to the claims contained in their Complaint filed on June 13, 1990.

(5) The Prothonotary is directed to mail notice of entry of this Order to all counsel of record pursuant to Pa.R.C.P. 236.

By the Court:

s/ H. Mundy, J.

For Plaintiffs:
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Krawitz & Krawitz, P.C.
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For Defendant, Franklin First Federal Savings Bank:
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Rosenn, Jenkins & Greenwald
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Wilkes-Barre, PA 18711

For Defendant, Sheriff of Luzerne County:
James P. Blaum, Esquire
11 West Union Street
Wilkes-Barre, PA 18702

APPENDIX B — MEMORANDUM AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA ENTERED APRIL 1, 1996

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1955 Philadelphia 1995

GERALDINE WILLIAMS AND WOODROW WILLIAMS, JR.,

Appellants

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK AND SHERIFF OF LUZERNE COUNTY

Appeal from the Order Entered May 5, 1995,
in the Court of Common Pleas of Luzerne County,
Civil Division, No. 3342-C OF 1990

BEFORE: HUDOCK, FORD ELLIOTT, AND CERCONE, JJ.

MEMORANDUM:

Appellants come before us challenging an order entering summary judgment in favor of both appellees. Appellants had brought suit against appellee bank and appellee sheriff's department for damages arising from what was characterized as willful and deliberate foreclosure[1] on mortgaged property in

1. It was the sheriff's sale and not the foreclosure proceeding, *per se*, that was at issue. Judgment in the foreclosure proceeding was entered October 24, 1986. Appellant's bankruptcy petition was not filed until January 12, 1987. The sheriff's sale occurred February 6, 1987, three days after appellants had filed a Suggestion of Bankruptcy with the Luzerne County prothonotary.

violation of the automatic stay of the Bankruptcy Code, 11 U.S.C.A. § 362. Previously, appellants had litigated the same matter before the United States Bankruptcy Court for the Middle District of Pennsylvania. The Bankruptcy Court agreed to set aside the sheriff's sale, but disallowed any damages on the basis that appellees' actions were not willful and deliberate. The trial court entered summary judgment on the bases of collateral estoppel and *res judicata.* We affirm.

Based upon our independent review of the briefs, the record, and applicable case and statutory law, we conclude that the opinion of the trial court, filed May 8, 1995, accurately states the facts and posture of the case and appropriately resolves appellants' claims on appeal. We affirm on that basis.

Accordingly, the order entered May 5, 1995, granting summary judgment for appellees is hereby affirmed. Jurisdiction relinquished.

Appendix B

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1955 Philadelphia 1995

GERALDINE WILLIAMS AND WOODROW WILLIAMS, JR.,

Appellants

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK AND SHERIFF OF LUZERNE COUNTY

Appeal from the Order Entered May 5, 1995,
in the Court of Common Pleas of Luzerne County,
Civil Division, No. 3342-C OF 1990

BEFORE: HUDOCK, FORD ELLIOTT, AND CERCONE, JJ.

JUDGMENT

***ON CONSIDERATION WHEREOF**, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* LUZERNE *County be, and the same is hereby* AFFIRMED. JURISDICTION RELINQUISHED.

BY THE COURT:

s/ illegible
PROTHONOTARY

Dated: APRIL 1, 1996

APPENDIX C — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT DENYING PETITION FOR ALLOWANCE OF APPEAL ENTERED JANUARY 17, 1997

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 416 M.D. Alloc. Dkt. 1996

GERALDINE WILLIAMS and WOODROW WILLIAMS, JR.,

Petitioners

v.

FRANKLIN FIRST FEDERAL SAVINGS BANK and SHERIFF OF LUZERNE COUNTY,

Respondents

Petition for Allowance of Appeal from Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 17th day of January, 1997, the Petition for Permission to Respond to Opposition is denied. The Petition for Allowance of Appeal is denied.

TRUE & CORRECT COPY

ATTEST: JAN 21 1997

s/ Joan L. Stehulak
JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

(3)

Supreme Court, U.S.
FILED
JUL 25 1997
CLERK

No. 96-1926

◆

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1996

◆

GERALDINE WILLIAMS
AND
WOODROW WILLIAMS, JR.

Petitioners,

- v -

FRANKLIN FIRST FEDERAL SAVINGS BANK AND
SHERIFF OF LUZERNE COUNTY,
SHERIFF'S DEPARTMENT OF LUZERNE COUNTY

Respondents.

On Petition For Writ of Certiorari
To The Supreme Court of Pennsylvania
Middle District

RESPONSE TO BRIEF IN OPPOSITION BY PETITIONERS

Woodrow Williams, Jr.
Geraldine Williams
pro se
110 Water Street
Gaithersburg, MD 20877
(301)258-9592

4 PP

RESPONSE TO BRIEF IN OPPOSITION

The Petitioners, Geraldine Williams, native of Pennsylvania, and Woodrow Williams, Jr., pray that this Honorable Court, through their Heart, Mind, and their Oath to uphold Justice and the Constitution of the United States Grant Certiorari in this matter.

The Petitioners offer as indisputable facts:

- Mortgage loans, Foreclosures, and Bankruptcy matters all come under Federal rules, regulations and Federal law. Constitutional Law is involved in this case and The United States Supreme Court has proper jurisdiction in these matters.
- Franklin and the Sheriffs Department foreclosed without a lift stay hearing and after receiving Notice of Suggestion of Bankruptcy.
- Franklin bought the home at foreclosure and

through this sale Franklin was lawfully bound to release the liens of record against this property.

- A Federal Bankruptcy Judge returned the property to the Petitioners after finding that an improper foreclosure had taken place and ordered the property returned with all expenses to be borne by Franklin.
- During the three years that the home was in the possession of Franklin, Franklin did not pay the taxes and Franklin allowed the property to deteriorate and go to waste. The property is uninhabitable and unsafe through the actions of negligence by Franklin.
- The Petitioners sought relief through the courts and asked for a hearing and a trial by jury for an award of damages.
- The Petitioners were never granted a hearing in the matter of non-payment of taxes and damages

to the property and negligence by Franklin.

- Franklin, by the admission under oath of Mr. Johnson, Vice President of Franklin at the time, in a Federal Bankruptcy Court, stated that Franklin has no loan of record signed by the Petitioners and therefore, no monies are due from the petitioners to Franklin.
- Franklin is still carrying this loan on their books as owed even though Franklin has no loan of record, the petitioners' cannot get a loan to repair the home and make the home habitable and safe, taxes have escalated enormously because of non-payment of taxes by Franklin creating undue financial hardship on the Petitioners who are senior citizens.
- The Petitioners have been egregiously harmed by the actions of Franklin and the Sheriffs Department.

- Any party that causes damage to occur to another's property must be held liable. To rule otherwise would give a message that destruction and negligence is permissible under the law.
- Certainly when one has possession of property they are liable to pay the taxes. Franklin did not pay any taxes while the home was in Franklin's possession. Franklin is asking this Honorable Court to exonerate Franklin from the responsibility of paying those taxes and the escalated costs associated with the non-payment of those taxes.

Amendment XIV of the United States Constitution provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the

laws".

The Petitioners stand on the contents of their original Brief of a **Petition for Writ of Certiorari** and Pray that this Honorable Court consider the contents of their Petition and Grant Certiorari.

Respectfully Submitted,

Woodrow W. Williams Jr
WOODROW WILLIAMS, JR.

Geraldine Williams
GERALDINE WILLIAMS

DATED: July 25, 1997